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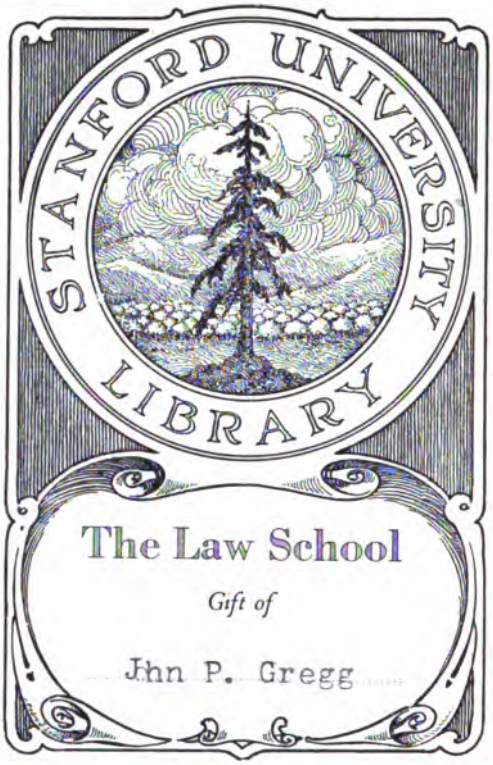
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THE

CODES AND STATUTES

OF

CALIFORNIA,

AS AMENDED AND IN FORCE

AT THE CLOSE OF THE TWENTY-SIXTH SESSION OF THE LEGISLATURE, 1885.

WITH NOTES CONTAINING REFERENCES TO ALL THE DECISIONS OF THE SUPREME COURT CONSTRUING OR ILLUSTRATING THE SECTIONS OF THE CODES, AND TO ADJUDICATIONS OF THE COURTS OF OTHER STATES HAVING LIKE CODE PROVISIONS,

IN

FOUR VOLUMES,

BY

F. P. DEERING,
Of the San Francisco Bar.

PENAL CODE AND STATUTES IN FORCE.

SAN FRANCISCO:
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PENAL CODE.

An Act to establish a Penal Code.

[Approved February 14, 1872.]

TITLE OF THE ACT.

1. *Title and divisions of this act.*

SECTION 1. This act shall be known as THE PENAL CODE OF CALIFORNIA, and is divided into three parts, as follows:

I. OF CRIMES AND PUNISHMENTS..... 26

II. OF CRIMINAL PROCEDURE..... 681

III. OF THE STATE PRISON AND COUNTY JAILS..... 1,573

The four codes are four statutes; each is a single act: *Earle* v. *Board of Education*, 55 Cal. 489. The whole code is to be construed together as in the case of a single statute; and amendments to any section thereof are to be regarded as amendments of the whole act: *C. P. R. R.* v. *Shackelford*, 63 Id. 261.

This act, how cited: Sec. 24, *post*.

Construction of the codes and of their various sections: See Pol. Code, secs. 4478 et seq.

PRELIMINARY PROVISIONS.

2. *When this act takes effect.*

SEC. 2. This code takes effect at twelve o'clock, noon, on the first day of January, eighteen hundred and seventy-three.

Effect of codes, generally: See Pol. Code, secs. 4478 et seq.

Laws passed at the same session at which the codes were adopted prevail over the codes: *Babcock* v. *Goodrich*, 47 Cal. 488; and see *Ex parte Newton*, 53 Id. 572. But under section 3891 of the Political Code, declaring that with respect to provisions concerning the revenue the code is to be considered as if passed on the last day of the session, all acts passed during that session are repealed except acts amendatory of or carrying into effect the codes: *Mitchell* v. *Crosby*, 46 Id. 97.

3. *Not retroactive.*

SEC. 3. No part of it is retroactive, unless expressly so declared.

Retroactive effect: See *supra*, note to section 2. Not only is the code to have a future operation, except where otherwise expressly declared, but amendments to the code receive a similar construction, and are not retroactive: *C. P. R. R.* v. *Shackelford*, 63 Cal. 261; *Sharp* v. *Blackenship*, 59 Id. 268; *Hibernia S. & L. Soc.* v. *Jordan*, 6 Pac. C. L. J. 686.

What is an express declaration of an intention to give a section or amendment a retroactive operation must often rest on construction, as in applying a measure of damages to conversion committed before the measure was provided: *Tulley* v. *Tranor*, 53 Cal. 274; or determining what rate of interest prevailed upon the adoption of the code: *Dunne* v. *Mastic*, 50 Id. 244.

Cited and applied to requirements in sections 1493 and 1500 of the Code of Civil Procedure, in regard to presentation of claims against decedents, in *Hibernia S. & L. Soc.* v. *Hayes*, 56 Cal. 297; so also in regard to the amendment to section 325 of that code requiring payment of taxes to make a good adverse holding: *Sharp* v. *Blankenship*, 59 Id. 288; *C. P. R. R.* v. *Shackelford*, 63 Id. 261.

Impairing vested rights: See Code Civ. Proc., sec. 8.

Ex post facto laws, what are.—Justice Chase thus defines *ex post facto* laws:

"1. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action.

"2. Every law that aggravates a crime, or makes it greater than when committed.

"3. Every law which changes the punishment, and inflicts a greater punishment than the law annexed to the crime when committed.

"4. Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender:" *Calder* v. *Bull*, 3 Dall. 390.

The expression "*ex post facto*" is technical, and is applied exclusively to penal statutes: *Calder* v. *Bull*, 3 Dall. 390. Such a law is one which punishes for an act not punishable when committed: *Cummings* v. *Missouri*, 4 Wall. 326; or imposes additional punishment: Id.; or changes the rules of evidence so that less or different testimony is sufficient to convict: Id.; or which changes the punishment after conviction: *Hartung* v. *People*, 22 N. Y. 106; or changes the kind and character of punishment which attached to the offense when it was committed: *Shepherd* v. *People*, 25 Id. 415; *Hartung* v. *People*, 26 Id. 169.

But it has been held that a statute which makes the breach of a pre-existing contract criminal, though not so prior to the passage of the act, is constitutional, though the soundness of this decision may well be doubted: *Blann* v. *State*, 39 Ala. 353.

See a valuable article on *ex post facto* laws and bills of attainder in 5 Crim. Law Mag. 325.

Laws not ex post facto.—Laws creating new tribunals, or conferring new jurisdiction, or enlarging or diminishing the powers of existing courts, are not *ex post facto: State* v. *Sullivan*, 14 Rich. 281; *Commonwealth* v. *Phillips*, 11 Pick. 28; nor are laws changing the place of trial: *Gut* v. *State*, 9 Wall. 35; nor laws changing criminal procedure: *People* v. *Mortimer*, 46 Cal. 114; *Walston* v. *Commonwealth*, 16 B. Mon. 15; *Perry* v. *Commonwealth*, 3 Gratt. 632. A law which provides that one convicted of a second offense shall receive greater punishment than for a first offense is not *ex post facto*, even when applied to the case of one who committed the first offense prior to the enactment of the law: *Ex parte Gutierrez*, 45 Cal. 429; *People* v. *Stanley*, 47 Id. 113; *Ross's Case*, 2 Pick. 165; *Rand* v. *Commonwealth*, 9 Gratt. 738.

Rule of construction.—A law will not be so construed as to give it a retroactive operation unless it is clearly apparent that such was the intention of the legislature: *Gates* v. *Salmon*, 28 Cal. 320; *Von Schmidt* v. *Huntington*, 1 Id. 55; *Hibernia S. & L. Society* v. *Jordan*, 6 Pac. C. L. J. 686.

Corresponding sections.—The same section is found in each of the other three codes.

4. *Construction of the Penal Code.*

SEC. 4. The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.

Construction of this code.—The code commissioners give the following explanation for this section. After referring to the old rule that penal statutes are to be strictly construed, they say: "However sound may be the arguments in favor of this rule, when applied to ordinary acts of the legislature, it is apparent that it would be improper to apply it in all its severity to a system of laws intended, in a great measure, to take the place of the common law, and having in view, as its leading object, the furtherance of justice and a disregard of technical strictness. The provisions of such a system ought to be construed in the same manner, and with like force and effect, as they would be were the principles enunciated resting in the unwritten law, and it was to this end that a section of similar import has been made a part of each of the codes," meaning section 4 of the other codes. By this section the common-rule law, that all penal statutes are to be strictly construed, and never extended by implication, has been abrogated in this state, and one adopted more likely to give effect to the provisions of this code and promote justice: *Ex parte Gutierrez*, 45 Cal. 431; *People* v. *Soto*, 49 Id. 68; *People* v. *West*, Id. 610; *People* v. *Tisdale*, 57 Id. 104. "The established rule of the common law undoubtedly was that statutes of the character of the one now under consideration should receive a strict construction in favor of him upon whom a penalty was to be inflicted; but this rule has been abrogated by the code, which has constituted itself in this respect its own interpreter:" *Ex parte Gutierrez, supra*; see *People* v. *Tisdale, supra*.

This rule of strict construction was not limited to statutes that were penal in their nature, but it extended to all statutes in derogation of the common law; and the uniform rule in this state, prior to the adoption of this section, was that all such statutes, penal or otherwise, should be strictly construed, and limited in their operations to the strict letter of the law: *Hotaling* v. *Cronise*, 2 Cal. 60; *People* v. *Buster*, 11 Id. 221; *Turner* v. *Tuolumne Co. Water Co.*, 25 Id. 400; *Pina* v. *Peck*, 31 Id. 362. The object of the legislature in passing this section was to do away with this rule of statutory construction, and to adopt a more liberal one in its stead, with the view of furnishing the courts with a rule of procedure more conformable to the purposes of justice. Statutes, however, in affirmance of the common law, are to be construed as was the rule by that law: *Baker* v. *Baker*, 13 Id. 95.

In the construction and interpretation of all laws, resort is frequently had to the title of the act for assistance in arriving at the true meaning thereof. It cannot be used for the purpose of restraining or controlling any positive provision, but in cases of doubt, it is often resorted to as a means of ascertaining the intent of the legislature, and when considered with other parts of the law, may materially aid in removing ambiguities therein: *Flynn* v. *Abbott*, 16 Cal. 365; *State* v. *Conkling*, 19 Id. 512; *People* v. *San Francisco*, 36 Id. 602; *Matter of Boston M.*

4 M. Co., 51 Id. 624; *Weed* v. *Maynard*, 52 Id. 459; *Harris* v. *Sup. of S. F.*, Id. 554; see *Hagar* v. *Sup. of Yolo County*, 47 Id. 232. The codes of California, divided, as they are, into titles, chapters, and sections, and the subject-matter of each chapter being designated by head-notes, more consideration is due to the latter, in the construction of the several chapters and sections, than is generally given to the title of an act. In considering this question, the following views were expressed by the supreme court of this state: "The practice act is divided into titles, chapters, and sections; the head of each chapter in the several titles is a note indicating generally the subjects to which the chapter is devoted. * * * While the rule is well settled that the title of an act will not control the language in the body of the statute, but may be referred to as tending to explain the intention when the language is doubtful, we are of opinion that these head-notes, indicating the particular subjects treated of in the several chapters, are entitled to more consideration than the title to the entire act. The revised statutes of New York (passed as one act) were also divided into titles, chapters, and sections, with similar head-notes to the chapters; and in discussing the effect to be given to these head-notes, the supreme court of that state say: 'The inscription to chapter 5 is not in any sense a title to a statute. It forms a part of the body of the act quite as much as the section cited, and it was inserted for the purpose of controlling and limiting the scope and application of the general words used in the chapter:' *People* v. *Molineux*, 53 Barb. 15. On appeal to the court of appeals this ruling was approved and affirmed: 40 N. Y. 113. If the head-note of the chapter is to be consulted in the interpretation of section 251, it becomes apparent that it was intended to apply to willful trespasses only:" *Barnes* v. *Jones*, 51 Id. 306; and see *Ex parte Koser*, 60 Id. 192; see *State* v. *Vowels*, 4 Or. 326.

In *Gonzales* v. *Wasson*, 51 Cal. 295, it was held that when the provisions of the different codes conflict with each other, such a construction must be given to them that all may, if possible, have effect. The provisions of the codes regulating judicial remedies apply only to proceedings in the state courts, and not to proceedings in the federal courts: *Majors* v. *Cowell*, Id. 478.

Construction of penal statutes generally: See an article by Heard in 2 Crim. Law Mag. 1.

Rules of construction of code provisions generally: See Pol. Code, sec. 4478 et seq.

Statutes in derogation of common law: See *supra*, third paragraph of this note, and section 4 of each of the codes, and the notes thereto.

5. *Provisions similar to existing laws, how construed.*

SEC. 5. The provisions of this code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

New enactments.—The codes were framed with a view to a complete system of law, designed, however, to disturb the existing state of things as little as possible, and not to impair vested rights. The foregoing section is one of several expressive of this design. It has been considered in connection with the succeeding section with reference to the effect of the codes upon tenure of office: *People* v. *Bissell*, 49 Cal. 407, the inspector of gas-meters case.

Revival by repeal.—"The Political Code contains a general provision that the repeal of existing statutes shall not revive any law heretofore repealed or suspended, nor any office heretofore abolished, and therefore such a provision has not been incorporated herein:" Commissioners' note. The section referred to is section 18.

6. *Effect of code upon past offenses.*

SEC. 6. No act or omission, commenced after twelve o'clock, noon, of the day on which this code takes effect as a law, is criminal or punishable, except as prescribed or authorized by this code, or by some of the statutes which it specifies as continuing in force and as not affected by its provisions, or by some ordinance, municipal, county, or township regulation, passed or adopted under such statutes, and in force when this code takes effect. Any act or omission commenced prior to that time may be inquired of, prosecuted, and punished in the same manner as if this code had not been passed.

Construction.—The provisions of this section have no reference to the forms of criminal procedure: *People* v. *Mortimer*, 46 Cal. 114.

Code commissioners' note.—The code commissioners give the following as a statement of the effect and plan of this code upon common-law and past offenses. It illustrates the design of framing a new body of laws for the state.

"**Abolition of common-law offenses.**—Section 143 of the crimes and punishment act of 1850, Stats. 1850, 229, as amended March 31, 1866, Stats. 1866, 468, among other things, declares that 'every act or offense not defined by statute which is a misdemeanor at common law is a misdemeanor in this state.' This amendment added to the confusion already existing in our criminal laws, so that at the time of the adoption of this code an examination of more than six thousand statutes, and the whole body of the common law, was necessary before it could be determined what acts or omissions were penal. Every one is presumed to know the law; yet, under the system then existing in this state, such knowledge was as unattainable by the masses as it would have been were the laws 'written in small character upon high pillars.' It may well be doubted whether a state has the moral right to hold the

citizen responsible for an act or omission not evil within itself, which act or omission it is impossible for the citizen to know is prohibited by law. At least, it is clearly the duty of the state to give to every citizen ready means by which a knowledge of the penal laws may be attained. To this end, under the title of 'Crimes and Punishments,' has been brought every act or omission made punishable. The difficulties encountered may be illustrated by the following instances: The revenue laws contain more than fifty penal clauses; the election laws more than thirty; the corporation laws more than twenty; and at least seven out of ten of the general acts contain provisions of a penal character. Through all these various acts the commissioners extended their examination, drew from them their penal clauses, and inserted them—pruned of redundant and contradictory matter—in the Penal Code, under appropriate subdivisions.

"**Effect of the code upon anterior offenses.**—In so far as this code declares acts criminal which heretofore have not been so regarded, or increases the severity or changes the kind of punishment inflicted for a crime defined by our former laws, the familiar provision of the federal constitution prohibiting *ex post facto* laws forbids that it be made applicable to acts committed before it takes effect: U. S. Const., art. 1, sec. 10, subd. 1; *Calder* v. *Bull*, 3 Dall. 386; *Fletcher* v. *Peck*, 6 Cranch, 87, 138. In so far as it diminishes the severity of the punishment by prescribing a less amount or duration of penalty of the same kind with that inflicted under the common law, there may be no constitutional reason to prevent its being made applicable to all offenses, irrespective of the date of commission: *Hartung* v. *People*, 22 N. Y. 95; *Commonwealth* v. *Mott*, 21 Pick. 492; *Keene* v. *State*, 3 Chand. 109. Ameliorations of punishment introduced by statute are often expressly extended to prior offenses. No natural right arises, however, in behalf of an offender to claim the benefit of a subsequent statute mitigating the penalty for offenses like his own, though clemency readily awards it to him. Convenience and simplicity in the administration of penal justice should control upon this point. The commissioners were of opinion that any attempt by general words to render such mitigations of punishment as are introduced by the code applicable to antecedent offenses is calculated to raise nice and embarrassing questions as to whether a given modification is a mitigation or not. They observe that it has been held that the judiciary cannot determine whether a provision that no person convicted of a capital offense shall be executed until after a year's confinement, nor then except upon special warrant from the governor—is or is not less severe than a former law imposing absolutely the punishment of death: *Hartung* v. *People*, 22 N. Y. 95, 106. Also, that a substitution of imprisonment, not exceeding seven years, for whipping, has been held not an increase of punishment: *Strong* v. *State*, 1 Blackf. 193; *Herber* v. *State*, 7 Tex. 69. They therefore recommended that, as it is necessary to retain the former system of prohibitions and penalties to a great extent, as respects acts already committed, it be retained complete, and applied to all acts committed before the hour at which this code takes effect. If a criminal statute is changed between the time of the commission of an offense and conviction, but contains a saving clause to the effect that the change shall not apply to the trial of offenses committed prior to such change, the punishment is regulated by the old law: *People* v. *Gill*, 7 Cal. 356."

7. *Words, what included in definition.*

SEC. 7. Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration; and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness. The following words, also, have in this code the signification attached to them in this section, unless otherwise apparent from the context:

Willfully.

1. The word "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

Neglect, negligence, etc.

2. The words "neglect," "negligence," "negligent," and "negligently" import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

Corruptly.

3. The word "corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

Malice, maliciously.

4. The words "malice" and "maliciously" import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

Knowingly.

5. The word "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.

Bribe.

6. The word "bribe" signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote, or opinion, in any public or official capacity.

Vessel.

7. The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, canals, boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

Peace officer.

8. The words "peace officer" signify any one of the officers mentioned in section eight hundred and seventeen of this code.

Magistrate.

9. The word "magistrate" signifies any one of the officers mentioned in section eight hundred and eight of this code.

Property.

10. The word "property" includes both real and personal property.

Real property.

11. The words "real property" are co-extensive with lands, tenements, and hereditaments.

Personal property.

12. The words "personal property" include money, goods, chattels, things in action, and evidences of debt.

Month.

13. The word "month" means a calendar month, unless otherwise expressed.

Will.

14. The word "will" includes codicils.

Writ.

15. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process" a writ or summons issued in the course of judicial proceedings.

Technical words, etc.

16. Words and phrases must be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning.

Words giving joint authority.

17. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them unless it be otherwise expressed in the act giving the authority.

Seal, what it includes.

18. When the seal of a court or public officer is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word "seal" against his name.

State, what it includes.

19. The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words "United States" may include the district and territories. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 419; *took effect July* 1, 1874.]

"Person:" *Douglass* v. *Pacific Mail S. S. Co.*, 4 Cal. 304. County is not: *Hunsaker* v. *Borden*, 5 Id. 288. "Person," in its legal signification, is a generic term, and includes artificial as well as natural persons: *S. V. W. W.* v. *Schottler*, 62 Id. 69, 116; *Douglass* v. *Pacific Mail S. S. Co.*, 4 Id. 306. The word "person," in the fourteenth amendment to the constitution of the United States, was thought not to include corporations, in *C. P. R. R.* v. *Board of Equalization*, 60 Id. 35; but the opposite view was entertained in *Railroad Tax Cases*, 8 Saw. 235.

"Writing" includes printing, and therefore it is not in violation of the section requiring the charge to the jury to be in writing for the court to read printed sections from the Penal Code: *People* v. *Mortier*, 58 Cal. 262, 269.

"Oath:" Code Civ. Proc., secs. 17, 2097.

"Signature."—Fac-simile of an autograph, printed and used as a signature, is a signature: *Pennington* v. *Baehr*, 48 Cal. 505. And an attorney's name printed to a complaint is a sufficient signing: *Hancock* v. *Bowman*, 49 Id. 413; *Barnard* v. *Heydrick*, 49 Barb. 62. But to cut a written signature and affix to another instrument is not a signing of that instrument: *Fox* v. *Board of Supervisors*, Id. 563. The clerk of a board of supervisors may adopt a printed signature: *Williams* v. *McDonald*, 58 Cal. 527.

Subd. 1. "Willful;" *People* v. *Murray*, 10 Cal. 309; *People* v. *Pool*, 27 Id. 572; *Benkert* v. *Benkert*, 32 Id. 469.

Subd. 2. "Negligence:" *Richardson* v. *Kier*, 34 Cal. 63.

Subd. 4. "Malice:" *Maynard* v. *F. F. Ins. Co.*, 34 Cal. 48; *People* v. *Taylor*, 36 Id. 255. The following is the note of the code examiners, at whose suggestion the amendment of 1874 was passed: "The words 'or an intent to do a wrongful act' are added to the definition of malice in the fourth subdivision to express with greater accuracy the legal meaning of the term. Mr. Bishop says, in his work on criminal law, 'malice, in legal phrase, is never understood to denote general malevolence, or unkindness of heart, or enmity toward a particular individual; but it signifies rather the intent from which flows any wrongful and injurious act committed without legal justification.' In *Bromage* v. *Prosser*, 4 Barn. & Cress. 247, Mr. Justice Bayley says: 'Malice in common acceptation means ill-will against a person; but in its legal sense it means a wrongful act done intentionally, without just cause or excuse.'" See also *post*, sec. 188, and note.

Subd. 6. "Bribe:" See this definition quoted in *People* v. *Markham*, 64 Cal. 158.

Subd. 10. "Property:" *McKeon* v. *Bisbee*, 9 Cal. 142; *Davis* v. *Mitchell*, 34 Id. 81; *Savings and Loan Society* v. *Austin*, 46 Id. 415; *People* v. *Hibernia Bank*, 51 Id. 243; Const. Cal., art. 13, sec. 1. "Property" includes evidences of debt, as a general rule: *People* v. *Eddy*, 43 Cal. 331; but *People* v. *Hibernia Bank*, 51 Id. 243, and *Miller* v. *Heilborn*, 58 Id. 133, illustrate how this meaning may be qualified by the context. The right to an appeal is property, within the meaning of the Penal Code, sec. 519. It will be an injury to property under this section to write threatening letters preventing one from prosecuting his appeal: *People* v. *Cadman*, 57 Id. 562.

Subd. 11. "Real property:" *State* v. *Moore*, 12 Cal. 56; *Teschemacher* v. *Thompson*, 18 Id. 12.

Subd. 12. "Personal property:" *Adams* v. *Hackett*, 7 Cal. 203; *Davis* v. *Mitchell*, 34 Id. 81.

Subd. 13. Month is meant to be a calendar and not a lunar month: *Savings and Loan Society* v. *Thompson*, 32 Cal. 347; *Sprague* v. *Norway*, 31 Id. 173; *Gross* v. *Fowler*, 21 Id. 392. Where a statute directs the publication of notices a certain number of times a week for a specified number of months, it is requisite, not only that the number of weekly publications be observed, but that the prescribed length of time, calculated according to the calendar month, be followed: *Savings and Loan Society* v. *Thompson*, *supra*.

Subd. 16. Words and phrases, how construed.—The above is the general rule with regard to the construction of words, whether in contracts, statutes, or constitutions. The meaning to be given to words in contracts is provided for in the Civil Code, secs. 1644, 1645, and Code Civ. Proc., sec. 1861. The following decisions follow the rule of the codes: *Houghton's Appeal*, 42 Cal. 35; *People* v. *Eddy*, 43 Id. 332; *Weill* v. *Kenfield*, 54 Id. 111; *Waller* v. *Harris*, 20 Wend. 555; *United States* v. *Jones*, 3 Wash. 209; *Martin* v. *Hunter's Lessee*,

1 Wheat. 326; *Mayor* v. *Winter*, 29 Ala. 651; *Philadelphia R. R.* v. *Catawissa R. R. Co.*, 53 Pa. St. 20; *Green* v. *Weller*, 32 Miss. 650. But if a technical word is manifestly used in an untechnical sense, the court will give it the meaning intended by the party using it: *C. P. R. R.* v. *Beal*, 47 Cal. 151; *Clark* v. *City of Utica*, 18 Barb. 151; *Robinson* v. *Varnell*, 16 Tex. 382. And see *Rosenberg* v. *Frank*, 58 Cal. 387, for a construction of the words "*pro rata*" in a will.

Subd. 17. Executing joint authority.—If, from the delegation of authority, it appear that all must not only meet but all must agree, the authority must be pursued: *People* v. *Coghill*, 47 Cal. 361. Before the code there were many authorities to the effect that, as a general rule, where the legislature had created a board of commissioners and conferred discretionary powers to decide upon matters of public interest, but had made no provision that a majority shall constitute a quorum, all must be present and consult, though a majority might decide: *People* v. *Coghill*, *supra*, citing *Grindley* v. *Barker*, 1 Bos. & Pul. 229; *Crocker* v. *Crane*, 21 Wend. 218; *Babcock* v. *Lamb*, 1 Cow. 239; *Ex parte Rogers*, 7 Id. 526; so also *Talcott* v. *Blanding*, 54 Cal. 289; where all met and a majority decided: *Smith* v. *Smith*, 28 Ill. 56; *Tuscarora Bridge Co.* v. *Jemison*, 33 Ala. 476; *McCrary* v. *Harrison*, 36 Id. 577; *Blodgett* v. *Prince*, 109 Mass. 4; *Henderson* v. *Bulkley*, 14 B. Mon. 236. Not only does section 15 remove the distinction between the exercise of a joint authority between public and private bodies, but also gives to the majority power not only to decide, but to meet and decide; where a majority, a quorum of the board, have met, a majority of the quorum may decide: *Flint* v. *Harrington*, 63 Cal. 257.

Subd. 18. An impression of a seal on paper without wax is sufficient: *Connolly* v. *Goodwin*, 5 Cal. 220; and such impression may be made with a pen: *Hastings* v. *Vaughan*, Id. 315. The appellate court will assume from the letters "L. S.," after a certificate of a notary printed in a transcript, that the original was properly executed: *Touchard* v. *Crow*, 20 Id. 150. In copying a sealed instrument, it is not necessary to transcribe the seal: *Jones* v. *Martin*, 16 Id. 165; *Smith* v. *Dall*, 13 Id. 510. An omission of a county recorder to make any mark for the seal does not vitiate the record of the writing: *Smith* v. *Dall*, *supra*. A corporation may adopt the seal of a private individual: *Gashwiler* v. *Willis*, 33 Id. 11; but when adopted must be used as the seal of the corporation: *Richardson* v. *Scott R. W. & M. Co.*, 22 Id. 156. See corresponding section in Code Civ. Proc., sec. 14.

Seals other than official are abolished by the Civil Code, sec. 1629.

8. *What intent to defraud is sufficient.*

SEC. 8. Whenever, by any of the provisions of this code, an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association, or body politic or corporate, whatever.

9. *Civil remedies preserved.*

SEC. 9. The omission to specify or affirm in this code any liability to damages, penalty, forfeiture, or other remedy imposed by law and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

Merger of civil remedy.—In all cases a crime includes an injury; every public offense is also a private wrong, and somewhat more; it affects the indivdual, and it likewise affects the community. But by the ancient common law it was held that the private injury was swallowed up in the public wrong: 4 Bla. Com. 6. Afterward this rule was relaxed, and it was held that the civil right to sue for the injury a party has received for a crse of felony is not merged or destroyed, but only suspended until the guilty party is convicted, or an earnest endeavor has been made to bring the offender to justice. After the accused had been convicted, or acquitted without collusion, a civil action could be prosecuted for the same injury: *Crosby* v. *Leng*, 12 East, 409; *White* v. *Spettigue*, 13 Mee. & W. 603. In some of the United States it has been decided that no civil action could be prosecuted before conviction: *Foster* v. *Tucker*, 3 Me. 458; S. C., 14 Am. Dec. 243. In most of the states, however, this rule has been directly repudiated: *Boston etc. R. R.* v. *Dana*, 1 Gray, 83, and cases there cited; 1 Bish. Crim. L., secs. 271 et seq.; see *White* v. *Fort*, 3 Hawks, 251; 1 Ben. & Heard's Lead. Cas. 34, note 42.

10. *Proceedings to impeach or remove officers and others preserved.*

SEC. 10. The omission to specify or affirm in this code any ground of forfeiture of a public office, or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose, or suspend any public officer or other person holding any trust, appointment, or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition, or suspension.

11. *Authority of courts-martial preserved—Contempts.*

SEC. 11. This code does not affect any power conferred by law upon any court-martial, or other military authority or officer, to impose or inflict punish-

ment upon offenders; nor any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt.

12. *Of sections declaring crimes punishable.*

SEC. 12. The several sections of this code which declare certain crimes to be punishable as therein mentioned devolve a duty upon the court authorized to pass sentence to determine and impose the punishment prescribed.

Appointing time of pronouncing judgment: Sec. 1191, *post.*

Showing cause against the judgment: Sec. 1201, *post.*

13. *Punishments, how determined.*

SEC. 13. Whenever in this code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court authorized to pass sentence, within such limits as may be prescribed by this code.

Excessive punishment.—In *People* v. *Riley*, 48 Cal. 549, a judgment sentencing the defendant for a longer period than the statute prescribed was held erroneous, and was reversed, and the proper judgment ordered entered.

14. *Witness's testimony may be read against him on prosecution for perjury.*

SEC. 14. The various sections of this code which declare that evidence obtained upon the examination of a person as a witness cannot be received against him in any criminal proceeding do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination.

15. *Crime and public offense defined.*

SEC. 15. A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

1. Death;
2. Imprisonment;
3. Fine;
4. Removal from office; or,
5. Disqualification to hold and enjoy any office of honor, trust, or profit in this state.

Crime and public offense: See secs. 16, 17.

"The use of the terms 'crime,' 'felony,' 'misdemeanor,' and 'offense' is far from uniform even among legal writers," say the code commissioners, and after citing the definitions of several text-writers, they conclude:

"The definition of the section is based upon the usage which has grown up in this state of employing 'crime' and 'offense' in the extensive signification, and confining 'felony' and 'misdemeanor' to denote the classes into which crimes are divided, and is in substantial accord with the definitions given by Mr. Livingston: Crim. Code, art. 75."

Subd. 1. Death punishment in case of treason: See sec. 37; of murder: Sec. 190.

Subd. 4. Removal from office: See secs. 737 et seq.; Const., art. 4, secs. 18, 21; Id., art. 12, sec. 19.

Subd. 5. Disqualification to hold office: Const. Cal., art. 20, secs. 10, 11.

16. *Crimes, how divided.*

SEC. 16. Crimes are divided into:

1. Felonies; and,
2. Misdemeanors.

See next section and note.

17. *Crimes defined.*

SEC. 17. A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime is a misdemeanor. When a crime punishable by imprisonment in the state prison is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed

a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the state prison. [*Amendment, approved March* 7, 1874; *Amendments* 1873–4, 455; *took effect sixtieth day after passage.*]

Crimes defined: See note to sec. 15; "Stats. 1851, 212, secs. 4, 5; *People* v. *War*, 20 Cal. 117. At common law, a felony was an offense which occasioned a total forfeiture of either lands or goods, or both, and to which might be superadded, according to the degree of guilt, capital or other punishment: 4 Bla. Com. 5; 1 Russell on Crimes, 42; 1 Ch. Pl. 14; 1 Hawk. P. C. 37; 5 Wheat. 159. 'Smaller faults, and omissions of less consequence, are comprised under the gentler names of misdemeanors only:' 4 Bla. Com. 5; see note to sec. 16:" Commissioners' note.

Felonies and misdemeanors.—At the common law, a felony was a public offense which occasioned a total forfeiture of either lands or goods, or both, and to which capital or other punishment might have been superadded, according to the degree of guilt: 4 Bla. Com. 95, 96. As distinguished from misdemeanors, felonies comprised originally every species of crime which occasioned the forfeiture of lands and goods. Misdemeanors comprised all other offenses, lower than felonies, which were the subject of indictment: 1 Whart. Crim. L., 8th ed., secs. 22, 23.

This distinction, although recognized to a limited extent, has generally fallen into disuse, and will, no doubt, in course of time, be entirely abolished. "In modern English legislation, any affected demarkation of crimes by the sort of moral or social significance anciently implied in a felony as contrasted with a misdemeanor is practically abandoned, though a memory of the distinction is preserved in certain judicial forms. The tendency of all modern legislation is to arrange crimes on no more logical or abstruse principle than that based on either the gravity of the punishment with which they are visited, or the dignity and constitution of the courts of justice in which they are investigated:" Amos on Jurisprudence, 302. The intent of this section was to do away with the common-law definition of a felony, and to substitute one in its stead which should have significance, and be readily understood. The proper meaning of the section is to declare all crimes (not denominated misdemeanors by statutes creating them) which are punishable by death or imprisonment in the state prison to be felonies. The definitions here given were adopted at an early date in this state: Stats. 1851, 212; and are the ones generally adopted in most of the United States. Under sections 4 and 5 of the act last cited, the question was presented to the supreme court of this state, whether certain acts that were to be punished by imprisonment in the state prison, or by fine, in the discretion of the court, were to be designated and prosecuted as felonies or as misdemeanors. In the determination of this question the court referred to the sections cited as follows: "The real objection to this indictment, if there be any, is that the facts set forth do not constitute a public offense, because the punishment prescribed being either imprisonment in the state prison, or a fine, it does not appear whether it is a felony or a misdemeanor, and hence it does not necessarily fall within any class of crimes known to the law. The discretion given as to the punishment certainly does not make the same act two offenses, and it would be a singular consequence if the fixing alternative punishments belonging to different classes of crimes should prevent a criminal act from being indictable as any crime. We think, however, there is no uncertainty as to the grade of the crime charged. 'A felony is a public offense punishable by death or by imprisonment in a state prison. Every other public offense is a misdemeanor:' Act to regulate proceedings in criminal cases, secs. 4, 5. Under these definitions, any offense which may be or is liable to be punished by death, or imprisonment in the state prison, is a felony. Any offense which is not liable to such punishment—that is, for which that grade of punishment cannot under any circumstances be inflicted—is a misdemeanor. Although the offense charged in this indictment may, in the discretion of the court in any particular case, be only punished by a fine, yet the offense is one which is punishable, which is liable to be punished, by imprisonment in the state prison, and hence it must be prosecuted with the forms and solemnities of a crime of the grade of a felony:" *People* v. *War*, 20 Cal. 119. To the same effect is *People* v. *Van Steenburgh*, 1 Park. Cr. 39. When the Penal Code was adopted, sections 4 and 5, just referred to, were re-enacted as section 17 of that code. At the session of the legislature of 1873–4, section 17 was amended by adding the following thereto: "When a crime punishable by imprisonment in the state prison is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the state prison." Under section 17, as thus amended, it was held that where a person had been convicted of an offense that was punishable by imprisonment in the state prison, or by confinement in the county jail, and a judgment had been rendered sentencing him to the latter, the crime of which he was convicted was only a misdemeanor: *People* v. *Aubrey*, 53 Cal. 427; see also *People* v. *Cornell*, 16 Id. 187. In *Pillsbury* v. *Brown*, 47 Id. 480, a misdemeanor is defined to be "an act or omission for which a punishment other than death or imprisonment in the state prison is denounced by law—that is, by the will of the supreme power, expressed by statute."

18. *Punishment of felony, when not otherwise prescribed.*

Sec. 18. Except in cases where a different punishment is prescribed by this code, every offense declared to be a felony is punishable by imprisonment in the state prison not exceeding five years.

19. *Punishment of misdemeanor, when not otherwise prescribed.*

SEC. 19. Except in cases where a different punishment is prescribed by this code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding five hundred dollars, or by both.

20. *Unity of act and intent.*

SEC. 20. In every crime or public offense there must exist a union or joint operation of act and intent, or criminal negligence.

Union of act and intent.—"All the several pleas and excuses which protect the committer of a forbidden act from the punishment which is otherwise annexed thereto may be reduced to this single consideration, the want or defect of will. An involuntary act, as it has no claim to merit, so neither can it induce any guilt; the concurrence of the will, when it has its choice either to do or to avoid the fact in question, being the only thing that renders human action either praiseworthy or culpable. Indeed, to make a complete crime, cognizable by human laws, there must be both a will and an act. * * * As a vicious will without a vicious act is no civil crime, so, on the other hand, an unwarrantable act without a vicious will is no crime at all. So that to constitute a crime against human laws, there must be: 1. A vicious will; and 2. An unlawful act consequent upon such vicious will:" 4 Bla. Com. 20. It is the universal doctrine that to constitute a crime there must concur both an evil act and an evil intent. *Actus non reum facit nisi meus sit rea:* 1 Bish. Crim. L., secs. 227, 229; 3 Greenl. Ev., sec. 13; *People* v. *Collins*, 53 Cal. 185; and see the elaborate discussion of this question in *People* v. *Harris*, 29 Id. 679, in note to sec. 22, *post*. This maxim, however, applies only to criminal cases; in civil matters the rule is otherwise: *Vaughan* v. *Menlove*, 3 Bing. N. C. 468. The intent with which a homicide was committed may be proved by direct or circumstantial evidence tending to establish the fact: *People* v. *Pool*, 27 Cal. 572; see sec. 1102, note.

Intoxication, effect of: Sec. 22, and note.
Insanity: Sec. 26, and note.

21. *Intent, how manifested, and who considered of sound mind.*

SEC. 21. The intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused. All persons are of sound mind who are neither idiots or lunatics, nor affected with insanity.

Presumptions as to intention.—*Conclusive presumption.*—It is provided in the Code of Civil Procedure that a malicious and guilty intent, from the deliberate commission of an unlawful act, for the purpose of injuring another, shall be conclusively presumed: Sec. 1962, *post*.

Other presumptions.—By section 1963, Code of Civil Procedure, it is enacted that the following presumptions are to be held satisfactory if uncontradicted, but that they may be controverted by other evidence, viz: 1. That an unlawful act was done with an unlawful intent; 2. That a person intends the ordinary consequence of his voluntary act. The effect of these statutory rules of evidence is that when the doing of an act which if coupled with a guilty intent would be a violation of law is proven, the burden of proving the act to have been done without a guilty intent is, in most cases, thrown on the accused: *People* v. *Harris*, 29 Cal. 678. These presumptions, however, are not to be arbitrarily applied. The jury are to accept certain general principles of probable reasoning, which it is the duty of the court to announce, not as binding rules of law, but as logical processes of great value in all questions of evidential induction: Whart. Crim. Ev., sec. 734 et seq.

22. *Drunkenness no excuse for crime—When it may be considered.*

SEC. 22. No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitue any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive, or intent with which he committed the act.

Intoxication, effect of, on responsibility for crime.—The law in this connection may be summed up as follows: 1. Settled insanity, produced immediately by intoxication, affects the responsibility in the same way as insanity produced by any other cause; 2. Insanity immediately produced by intoxication does not destroy responsibility where the patient, when sane and responsible, made himself voluntarily intoxicated; 3. While intoxication *per se* is no defense to the fact of guilt, yet when the question of intent or premeditation is concerned, evidence of it is material for the purpose of determining the precise degree: 1 Whart. Crim. L., 7th ed., sec. 32.

An exception to the second rule above given

will be found in those cases where the law requires, as it does in some offenses, a specific intent as distinguished from mere general malevolence to render a person guilty. In such cases the intent to drink, and the drunkenness following, cannot supply the place of the specific intent: 1 Bish. Crim. L., sec. 408. Where one passing counterfeit money is too drunk to know it to be counterfeit, and consequently to entertain the intent to defraud, he is not liable criminally: *Pigman* v. *State*, 14 Ohio, 555; *United States* v. *Roudenbush*, Baldw. 514. And where the offense charged was that of assault with intent to commit murder, it was said to be a proper instruction to the jury that if the defendant's mental faculties were so overcome by intoxication that he was not conscious of what he was doing; or if he did know what he was doing, but did not know why he was doing it; or did not know that his actions and the means he was using were naturally adapted or calculated to endanger life or produce death—then he had not sufficient capacity to entertain the intent, and in that event they could not infer the intent from his acts: *Roberts* v. *People*, 19 Mich. 401. The following has been stated by the supreme court of California as a correct exposition of the law applicable to most cases: "It is a well-settled rule of law that drunkenness is no excuse for the commission of a crime. Insanity, produced by intoxication, does not destroy responsibility when the party, when sane and responsible, made himself voluntarily intoxicated; and drunkenness forms no defense whatever to the fact of guilt, for when a crime is committed by a party while in a fit of intoxication, the law will not allow him to avail himself of his own gross vice and misconduct to shelter himself from the legal consequences of such crime. Evidence of drunkenness can only be considered by the jury for the purpose of determining the degree of the crime, and for this purpose it must be received with great caution:" *People* v. *Lewis*, 36 Cal. 531; *People* v. *Williams*, 43 Id. 344; *People* v. *Ferris*, 55 Id. 588; *People* v. *Jones*, 63 Id. 168.

People v. Harris, 29 Cal. 678.—The defendant was indicted for voting twice at the general election held September 6, 1865. The evidence showed that the defendant voted at the election polls of the fifth district of San Francisco at about ten o'clock in the forenoon, when his right to vote was challenged, on the ground that he was not a resident of the district. The challenge being withdrawn, the defendant voted. About two or three o'clock in the afternoon he returned to the same polls very much intoxicated, and again offered to vote. The same person who had challenged his right to vote at that place in the morning informed him that he had voted before, and that he would get himself in trouble if he voted again. The defendant, in reply, vehemently protested that he had not voted, and declared his willingness to so make oath. The oath prescribed by the statute was then administered to him by the proper officer, to which he responded in the affirmative, and then voted the second time. Upon trial, defendant was found guilty, and sentenced to imprisonment in the state prison for one year.

The supreme court said: "The theory upon which it was sought to exculpate the defendant of criminality was that he was in such a condition mentally when he voted the second time as not to know that he had already voted, but, on the contrary, believed that he had not done so. It is laid down in the books on the subject that it is a universal doctrine that to constitute what the law deems a crime there must concur both an evil act and an evil intent. *Actus non facit reum nisi mens sit rea:* 1 Bish. Crim. L., secs. 227, 229; 3 Greenl. Ev., sec. 13. Therefore the intent with which the unlawful act was done must be proved, as well as the other material facts stated in the indictment, which may be by evidence, either direct or indirect, tending to establish the fact, or by inference of law from other facts proved. When the act is proved to have been done by the accused, if it be an act in itself unlawful, the law in the first instance presumes it to have been intended, and the proof of justification or excuse lies on the defendant to overcome this legal and natural presumption: 3 Greenl. Ev., secs. 13, 14, 18. Now, when the statute declares the act of voting more than once at the same election by the same person to be a felony, it must be understood as implying that the interdicted act must be done with a criminal intention, or under circumstances from which such intention may be inferred. The defendant's counsel at the trial seems to have apprehended the true rule of law on the subject, and to have regarded the burden as on the defendant to show by evidence that the act of his voting the second time was not criminal; and for this purpose evidence of his intoxicated and excited condition was submitted to the jury, in order that they might determine, under the rules of law governing in such cases, whether the defendant was conscious at the time of having voted before at the same election. The question was fairly before the jury whether the defendant knew what he was about when he voted the second time. From the evidence in the case it appears he was very much intoxicated, but whether to a degree sufficient to deprive him of all knowledge of having already voted was for the jury to decide.

"The law does not excuse a person of a crime committed while in a state of voluntary intoxication. In *Rex* v. *Thomas*, 7 Car. & P. 817, Parke, B., said to the jury: 'I must tell you that if a man makes himself voluntarily drunk, it is no excuse for any crime he may commit whilst he is so; he takes the consequences of his own voluntary act, or most crimes would go unpunished;' and to the same effect is the language of Alderson, B., in *Rex* v. *Meakin*, 7 Id. 297; and in harmony with this doctrine is the whole current of English authority: 1 Whart. Crim. L., sec. 39. Mr. Wharton says that in this country the same position has been taken with marked uniformity, it being invariably held that voluntary drunkenness is no defense to the *factum* of guilt; the only point about which there has been any fluctuation being the extent to which evidence of drunkenness is receivable to determine the exactness of the intent or extent of deliberation; Id., sec. 40. In *Pigman* v. *State*, 14 Ohio, 555, it was held that a man who passes counterfeit money is not criminally liable if he is so drunk as to be incapable of knowing that it is counterfeit, and consequently of entertaining the intention to defraud, provided there was no ground to suppose he knew the money to be counterfeit

before then; and in *Swan* v. *State*, 4 Humph. 136, 141, the supreme court of Tennessee said: 'Although drunkenness, in point of law, constitutes no excuse or justification for crime, still, when the nature and essence of a crime is made by law to depend upon the peculiar state and condition of the criminal's mind at the time and with reference to the act done, drunkenness, as a matter of fact affecting such state and condition of the mind, is a proper subject for consideration and inquiry by the jury. The question in such case is, What is the mental *status?*' In *Regina* v. *Moore*, 3 Car. & Kir. 319, the defendant was indicted for an attempt to commit suicide by drowning, and in defense it was alleged she was unconscious, from drunkenness, at the time of the nature of the act. The court was of the opinion that if she was so drunk as not to know what she was about the jury could not find that she intended to destroy herself: *Regina* v. *Cruse*, 8 Car. & P. 546; *United States* v. *Roudenbush*, 1 Baldw. 517; *Kelly* v. *State*, 3 Smed. & M. 518; *Pirtle* v. *State*, 9 Humph. 663; *Haile* v. *State*, 11 Id. 154.

"While the condition of the accused, caused by drunkenness, may be taken into consideration by the jury, with the other facts of the case, to enable them to decide in respect to the question of intent, it is proper to observe that drunkenness will not excuse crime: *People* v. *King*, 27 Cal. 514. The inquiry to be made is, whether the crime which the defendant is accused of having committed has in point of fact been committed, and for this purpose whatever will fairly and legitimately lead to the discovery of the mental condition and *status* of the accused at the time may be given in evidence to the jury, and may be considered by them in determining whether the defendant was in fact guilty of the crime charged against him. Great caution is necessary in the application of this doctrine, and those whose province it is to decide in such cases should be satisfied beyond a reasonable doubt, from all the facts and circumstances before them, that the unlawful act was committed by the accused when his mental condition was such that he did not know that he was committing a crime, and also that no design existed on his part to do the wrong before he became thus incapable of knowing what he was doing.

"We have said more respecting the character of the defense, or excuse imposed, than would have been necessary but for the reason that it is important that those who may be guilty of violating the law may understand that a state of intoxication can be of no avail as an excuse for crime.

"The court told the jury, as we have seen, that the statute makes the act of voting more than once at the same election, and not the act of voting knowingly—that is, intentionally—more than once at any one election, a crime. The court further charged the jury, in substance, that evidence of voluntary intoxication is properly admissible as affecting crime only in those cases in which it is necessary to ascertain whether the accused was in a mental condition which enabled him to form a deliberate, premeditated purpose to commit the offense; but in the same connection the jury were told, in effect, that the case before them was not one of those cases in which the defendant could interpose the defense that he was intoxicated to a degree rendering him unconscious of what he had done, and of the wrong which he was doing. The court then instructed the jury, at the request of the defendant's counsel, that every crime involves a union of act and intent, or criminal negligence. That the law does not punish a man for his intention, but that act and intent must unite to constitute a crime; but at the same time the court refused to modify in any degree the charge already given, though especially requested so to do.

"Taking these two portions of the charge together, we may understand the court as declaring: 1. That a crime is constituted by the commission of a forbidden act, united with a felonious intent on the part of him who does the act, or caused it to be done; 2. That the act of voting more than once at the same election was a crime, even though not done with knowledge on the part of him who so votes that he was voting the second time; 3. That the case before the jury was not one in which the defendant could show that by reason of his intoxicated condition he did not know what he was doing when he voted the second time.

"We do not see how these charges involving the question of felonious knowledge or intention can be harmonized. The second and third stand in direct antagonism to the first, and the greater prominence was given to the one of which the defendant complains, and which we think to be erroneous. We are of the opinion the court erred also in excluding from the jury any consideration of the mental *status* of the defendant by reason of his intoxicated condition when he voted the second time."

23. *Certain statutes specified as continuing in force.*

SEC. 23. Nothing in this code affects any of the provisions of the following statutes, but such statutes are recognized as continuing in force, notwithstanding the provisions of the codes, except so far as they have been repealed or affected by subsequent laws:

1. All acts incorporating or chartering municipal corporations, and acts amending or supplementing such acts;

2. All acts consolidating cities and counties, and acts amending or supplementing such acts;

3. All acts for funding the state debt, or any part thereof, and for issuing state bonds, and acts amending or supplementing such acts;

4. All acts regulating and in relation to rodeos;

5. All acts in relation to judges of the plains;

6. All acts creating or regulating boards of water commissioners and overseers in the several townships or counties of the state;

7. All acts in relation to a branch state prison;

8. An act for the more effectual prevention of cruelty to animals, approved March thirtieth, eighteen hundred and sixty-eight;

9. An act for the suppression of Chinese houses of ill-fame, approved March thirty-first, eighteen hundred and sixty-six;

10. An act relating to the Home of the Inebriate of San Francisco, and to prescribe the powers and duties of the board of managers and the officers thereof, approved April first, eighteen hundred and seventy;

11. An act concerning marks and brands in the county of Siskiyou, approved March twentieth, eighteen hundred and sixty-six;

12. An act to prevent the destruction of fish in the waters of Bolinas bay, in Marin county, approved March thirty-first, eighteen hundred and sixty-six;

13. An act concerning trout in Siskiyou county, approved April second, eighteen hundred and sixty-six;

14. An act to prevent the destruction of fish in Napa river and Sonoma creek, approved January twenty-ninth, eighteen hundred and sixty-eight.

15. An act to prevent the destruction of fish and game in, upon, and around the waters of Lake Merritt or Peralta, in the county of Alameda, approved March eighteenth, eighteen hundred and seventy;

16. An act to regulate salmon fisheries in Eel river, in Humboldt county, approved April eighteenth, eighteen hundred and fifty-nine;

17. An act for the better protection of stock-raisers in the counties of Fresno, Tulare, Monterey, and Mariposa, approved March twentieth, eighteen hundred and sixty-six;

18. An act concerning oysters, approved April twenty-eighth, eighteen hundred and fifty-one;

19. An act concerning oyster-beds, approved April second, eighteen hundred and sixty-six;

20. An act concerning gas companies, approved April fourth, eighteen hundred and seventy.

Acts continued in force.—The reason assigned by the code commissioners for this section is, as appears from their notes: "The acts retained by this and other sections of the codes, but not incorporated in either code, are chiefly temporary in their character, and for that reason ought not to have a place in a code intended to be permanent." In the following cases the supreme court of this state has passed upon the effect of the codes upon statutes contended to have been continued in force by this section: The provisions of the Political Code, with respect to the collection of the revenue in the city and county of San Francisco, were deemed to have superseded existing regulations: *Savings and Loan Soc.* v. *Austin*, 46 Cal. 481. The acts relative to percentage on the amount involved in an action forming part of the costs: *Whitaker* v. *Haynes*, 49 Id. 596; to the lien on live-stock for feed or pasture furnished: *Johnson* v. *Perry*, 53 Id. 351; to the salary of the sheriff in the city and county of San Francisco: *Adams* v. *San Francisco*, 50 Id. 118; and see sec. 4331 Pol. Code; to the collection of licenses: *Ex parte Newton*, 53 Id. 571; and to the San Francisco police court: *Ex parte Simpson*, 47 Id. 127; were not affected by the code. Sacramento county was held not to be existing under a municipal charter within the meaning of the first subdivision above: *People* v. *Sacramento Co.*, 45 Id. 692. But the consolidation act remained unaffected by the Political Code: *Wood* v. *Election Commissioners*, 58 Id. 565. And see further acts in force, secs. 19, 4442, Pol. Code.

Subd. 1-6.—The acts referred to in the first six subdivisions will be found in the Political Code in their appropriate places.

Subd. 7. Branch prisons: See acts in note to sec. 1595, *post*.

Subd. 8-20.—The act referred to in subdivision 8 will be found in Stats. 1868, 604; but see Stats. 1874, 499; in subdivision 9, see Stats. 1866, 641; but see amendments, Stats. 1874, 84; in subdivision 10, see Stats. 1870, 585; but compare Stats. 1876, 325; in subdivision 11, see Stats. 1866, 332; in subdivision 12, see Stats. 1866, 637; in subdivision 13, see Stats. 1866, 857; in subdivision 14, see Stats. 1868, 13; but see amendment, Stats. 1871, 441; in subdivision

15, see Stats. 1870, 325; in subdivision 16, see Stats. 1859, 298; in subdivision 17, see Stats. 1866, 322; in subdivision 18, see Stats. 1851, 432; but see repealing clause, Stats. 1874, 940; in subdivision 19, see Stats. 1866, 848; also see Stats. 1874, 940.

24. *This act, how cited.*

SEC. 24. This act, whenever cited, enumerated, referred to, or amended, may be designated simply as "the Penal Code," adding, when necessary, the number of the section.

This act, how cited.—The constitution nowhere uses the word "code," but speaks of the way in which an "act" may be revised or amended: Art. 4, sec. 24. In *Earle* v. *Board of Education*, 55 Cal. 489, it was in effect said by Justice McKinstry, in his concurring opinion, that the proper title of what is commonly known as "the Political Code" is "An act to establish a Political Code."

Title of the act: See *ante*, sec. 1.

PART I.

OF CRIMES AND PUNISHMENTS.

TITLE I.

OF PERSONS LIABLE TO PUNISHMENT FOR CRIME.

26. *Who are capable of committing crimes.*

SEC. 26. All persons are capable of committing crimes except those belonging to the following classes:

1. Children under the age of fourteen, in the absence of clear proof that at the time of committing the act charged against them they knew its wrongfulness:

2. Idiots;

3. Lunatics and insane persons;

4. Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent;

5. Persons who committed the act charged without being conscious thereof;

6. Persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence;

7. Married women (except for felonies) acting under the threats, command, or coercion of their husbands;

8. Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 422; *took effect July* 1, 1874.]

Subd. 1. Infants.—See an elaborate discussion of the criminal liability of infants in 5 Law Rep., N. S., 364. The period of life at which a capacity for crime commences is not susceptible of being established by an exact rule which shall operate justly in every possible case: 1 Bish. Crim. L., sec. 368. At common law, a child under seven years of age was conclusively presumed incapable of committing any crime: 4 Bla. Com. 22; 3 Ch. Crim. L. 724; *People* v. *Townsend*, 3 Hill (N. Y.), 479; *Willett Commonwealth*, 13 Bush, 230; *Marsh* v. *Loader*, 14 C. B., N. S., 535; 1 Whart. Crim. L., 8th ed., sec. 68; 1 Bish. Crim. L., sec. 368. During the interval between seven and fourteen, the law presumes an infant to be destitute of criminal design; but this presumption diminishes as the age increases, and even during this interval of youth may be repelled by evidence of a vicious and wrong intention: *Godfrey* v. *State*, 31 Ala. 323; *State* v. *Learnard*, 41 Vt. 585; *State* v. *Guild*, 11 N. J. L. 163; S. C., 18 Am. Dec. 404; *Commonwealth* v. *Mead*, 10 Allen, 398; *People* v. *Davis*, 1 Wheel. 230; *People* v. *Teller*, Id. 231; *State* v. *Goin*, 9 Humph. 174; *Rex* v. *Owen*, 4 Car. & P. 236; *Rex* v. *Groombridge*, 7 Id. 582. Tenderness of years will not excuse a maturity in crime. The power of contracting guilt is measured rather by the strength of the delinquent's understanding than by days and years: 3 Ch. Crim. L. 724. The question to be determined is, Was there a guilty knowledge of wrong-doing? The capacity for crime in persons above the age of seven years is always a question of fact for the determination of the jury.

From observation and experience, the law assumes, *prima facie*, that persons over fourteen years of age are capable of crime, but allows this presumption to be controlled by proof of the real fact. During the intermediate period from seven to fourteen, which is called by Blackstone "the dubious stage of discretion," the law makes no presumption in reference to capacity to commit crime, but leaves it to be determined by the jury upon the evidence: 1 Whart. Crim. L., 8th ed., sec. 58; 1 Bish. Crim. L. 368.

The presumption of law in favor of infants under fourteen, and the necessity of satisfying

the jury that the child, when committing the act, must have known that he was doing wrong, is well illustrated by the case of *Rex* v. *Owen*, 4 Car. & P. 236, where a girl ten years of age was indicted for stealing coals. It was proved that she was standing by a large heap of coals belonging to the prosecutor, and that she had a basket upon her head containing a few coals which the girl herself said she had taken from the heap. Littledale, J., in summing up to the jury, remarked: "In this case, there are two questions: 1. Did the prisoner take the coals? and 2. If she did, had she at the time a guilty knowledge that she was doing wrong? The prisoner is only ten years of age, and unless you are satisfied by the evidence that, in committing this offense, she knew that she was doing wrong, you ought to acquit her. Whenever a person committing a felony is under fourteen years of age, the presumption of law is that he or she has not sufficient capacity to know that it is wrong, and such person ought not to be convicted, unless there be evidence to satisfy the jury that the party, at the time of the offense, had a guilty knowledge that he or she was doing wrong." The jury returned a verdict of "not guilty," adding: "We do not think the prisoner had any guilty knowledge." So in *People* v. *Davis*, 1 Wheel. 230, in an indictment for larceny, the defendant being not yet fourteen years old by a few weeks. The taking was clearly proved, but no evidence was offered of his capacity to commit crime, and the jury was instructed that the law presumes an infant under fourteen incapable of committing crimes, "and in order to show his liability, it was necessary to prove his capacity;" and there being no evidence either way upon the point, the defendant was acquitted. This doctrine was again distinctly affirmed in *Queen* v. *Smith*, 1 Cox C. C. 260. In *Willet* v. *Commonwealth*, 13 Bush, 230, it was held that a sense of moral guilt only on the part of an infant twelve years of age, in the absence of a knowledge of his legal responsibility for his wrongful act, will not authorize a conviction.

Confessions of an infant.—The question has been much discussed, whether the confessions of an infant are admissible against him in proof of the commission of crime; and it has been sometimes thought that as in a civil case an infant is not bound by his admissions and declarations, so in a criminal case his declarations of his own guilt are not admissible; and if so, are not a sufficient proof of the the commission of the crime. But this reasoning seems not to be supported, and it is well settled upon the authorities that the confessions of an infant, if otherwise competent, are admissible against him, in the same manner as confessions of adults: *Rex* v. *Wild*, 1 Moo. C. C. 452; *Rex* v. *Upchurch*, Id. 465; *Mather* v. *Clark*, 2 Aik. 209; *Commonwealth* v. *Zard*, cited in Roscoe on Ev. 31, note; *State* v. *Bostick*, 4 Harr. 563. This question seems to have received more consideration in this country than in England. Thus in *State* v. *Aaron*, 5 N. J. L. 231, a slave of the age of ten years and ten months was indicted for murder, and it was much discussed whether his confessions of the crime were admissible in evidence. It was held that they were admissible, but to furnish the grounds of a conviction they ought to be clear and pregnant, and corroborated by circumstances, and made understandingly. One of the most striking criminal trials to be found on record was that of *State* v. *Guild*, 11 N. J. L. 163; S. C., 18 Am. Dec. 404. There the prisoner, aged twelve years and five months, was indicted for the murder of Catherine Beakes; his own confessions were the principal evidence, the *corpus delicti* being otherwise proved. The court held this sufficient, and the boy was convicted and executed.

By section 1880, Code of Civil Procedure, subd. 2, children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly, are not entitled to be witnesses: See *People* v. *Bernal*, 10 Cal. 66.

Subd. 2. Idiots: See *infra*.

Subd. 3. Insanity—Definitions and classifications.—This word, in modern times, has been used to designate all mental impairments and deficiencies, and includes in it the terms "lunacy," "idiocy," and "unsoundness of mind." The common law originally recognized but two kinds of insanity, idiocy and lunacy, the subjects of which were designated by the term "*non compotes mentis*," which was used as a generic term. In addition to this old division, the modern cases often employ a classification originating with Esquirol, and which, as restated by Dr. Hammond, is substantially as follows:

Melancholia.—Perversion of the understanding in regard to an object or a small number of objects, with the predominance of sadness and depression of mind.

Monomania.—Perversion of understanding limited to a single object, or a small class of objects, with predominance of mental excitement.

Mania.—A condition in which the perversion of understanding embraces all kinds of objects, and is attended with mental excitement.

Dementia.—A condition in which those affected are incapable of reasoning, from the fact that the organs of thought have lost their energy, and the force necessary for performing their functions.

Imbecility or idiocy.—A condition in which the organs have never been sufficiently well conformed to permit those affected to reason correctly.

Ray on Medical Jurisprudence of Insanity, sec. 49, gives a tabulated view of the subject, interesting in showing the refinement to which distinctions have been carried.

Rules by the English judges.—In the discussion which occurred in the house of lords in 1843, the opinions of the judges, in answer to the questions propounded to them, established in England the following rules relative to criminal responsibility:

1. A person who labors under partial delusions only, and is not in other respects insane, notwithstanding he may do the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law.

2. The jury are to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be

responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong.

3. If a person labors under a partial delusion, and is in other respects sane, he is to be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real.

4. A medical man conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial and the examination of all the witnesses, cannot be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, nor his opinion whether the prisoner was conscious at the time of doing the act that he was acting contrary to law, or whether he was laboring under a delusion: 1 Car. & Kir. 130.

In the United States, the three rules first given have not always been strictly followed, the instructions given to juries being in many cases much more favorable to the accused. Thus, in a late and leading case, where a full discussion and examination of the authorities was had, it was held that neither delusion nor knowledge of right and wrong, nor design or cunning in planning and executing the deed, and escaping or avoiding detection, nor ability to recognize acquaintances, or to labor, or transact business, or manage affairs, is, as a matter of law, a test of mental disease; but all symptoms and all tests of mental disease are purely matters of fact to be determined by the jury: *State* v. *Jones*, 50 N. H. 369.

Presumption of sanity.—Ordinary experience teaches that the majority of men are sane; consequently it is to be presumed that a defendant was sane at the time he committed the act with which he is charged, until it is proved that he is insane. See an article on Presumptions in Criminal Cases by Wharton, 1 Crim. Law Mag. 32. The burden of proof is on the defendant, but proof beyond a reasonable doubt is not required; the insanity must be established by such a preponderance of evidence that if the question were submitted to the jury in a civil case they would find the defendant insane: *People* v. *Coffman*, 24 Cal. 230; *People* v. *Myers*, 20 Id. 518; *People* v. *McDonell*, 47 Id. 134; *People* v. *Wilson*, 49 Id. 13; *People* v. *Bell*, Id. 485; *People* v. *Ferris*, 55 Id. 588; *Commonwealth* v. *Eddy*, 7 Gray, 583; *Walter* v. *People*, 32 N. Y. 147; *Ferris* v. *People*, 35 Id. 125; *Loeffner* v. *State*, 10 Ohio St. 599; *State* v. *Lawrence*, 57 Me. 574; *Hopps* v. *People*, 31 Ill. 385; *State* v. *Felter*, 32 Iowa, 50. Other states have held that the jury should acquit if there is a reasonable doubt as to sanity. It is said that as no insane person can commit a crime, it necessarily follows that if the jury have a reasonable doubt of the defendant's sanity, they must also have a reasonable doubt of his guilt. To doubt his sanity is to doubt his guilt, and to doubt his guilt, if the doubt be a reasonable one, is to acquit: *State* v. *Crawford*, 11 Kan. 32; *Polk* v. *State*, 19 Ind. 170; *State* v. *Jones*, 50 N. H. 369.

Where defendant is proved to have once been insane, it is to be presumed, until the contrary is shown, that he continued insane, unless the insanity proved was accidental or temporary in its nature, or was occasioned by the violence of disease: *People* v. *Farrell*, 31 Cal. 576; *People* *Francis*, 38 Id. 183; 1 Whart. Crim. L., 7th ed. sec. 55; 1 Greenl. Ev., sec. 42.

Presumption of insanity at time of commission of the act from insanity a short time prior thereto: *People* v. *Smith*, 57 Cal. 130.

Insanity—Instructions.—It has been held that an instruction that the true test of insanity is whether the accused, at the time of committing the crime, was conscious that he was doing what he ought not to do, was correct: *People* v. *Hobson*, 17 Cal. 424; *People* v. *McDonell*, 47 Id. 134; And that before the jury can believe the defendant insane at the time of the commission of the act, it must first be shown that he had been insane at some prior time, or has been subsequently insane: *People* v. *March*, 6 Id. 543. And an instruction given for the purpose of impressing upon the jury the importance of special care and circumspection in considering the evidence tending to establish the insanity of a defendant at the time of the commission of the offense charged is proper: *People* v. *Dennis*, 39 Id. 625. An instruction that if the jury find that the defendant was insane at the time of the commission of the act they should declare him not guilty is too broad, and is not law: *People* v. *Best*, 39 Id. 690. Neither should the court instruct the jury that if the evidence creates a reasonable doubt in the minds of the jury as to the sanity of the defendant at the time he committed the act he should be acquitted. The law presumes a person sane, and if insane, he must prove it by a preponderance of evidence: *People* v. *Myers*, 20 Id. 518.

Where the court gave the jury two separate instructions as to the degree of proof required to establish insanity of defendant, one of which correctly stated the law but the other did not, a new trial was granted: *People* v. *Messersmith*, 61 Cal. 246; and see next paragraph.

Insanity, Evidence of.—Where the accused relies on the defense of insanity, "he is bound to establish it by such a preponderance of evidence that if the question were submitted to the jury in a civil case they would find him insane:" *People* v. *Messersmith*, 61 Cal. 246, 248, citing *People* v. *Coffman*, 24 Id. 230; *People* v. *McDonell*, 47 Id. 134; *People* v. *Wilson*, 49 Id. 13; *People* v. *Ferris*, 55 Id. 588; and *People* v. *Walker*, 88 N. Y. 81.

Proof of insanity.—*People* v. *Wreden*, 59 N. Y. 392, criticised in *People* v. *Hamilton*, 62 Id. 377, 384, where the amount of evidence to warrant acquittal is stated. It may be shown in evidence, under the plea of not guilty, that defendant was insane at the time the act was committed: *People* v. *Olwell*, 28 Cal. 456. If there is any evidence tending to prove the personal insanity of defendant, or if the act committed was apparently without motive, the defendant should be permitted to introduce evidence of the insanity of his parents: *People* v. *Smith*, 31 Id. 466. That insanity cannot be proved by general reputation or by the belief of members of the person's family, see *People* v. *Pico*, 62 Id. 50. Or as to the testimony of acquaintances, see same case. A witness, not an expert, who details a conversation had between

himself and another, may also, in connection therewith, state his opinion as to the state of mind of such person at the time of the conversation: *People* v. *Sanford*, 43 Id. 29. In proof of insanity, though the evidence must relate to the time of the act in question, yet evidence of insanity before and after that time is admissible: *People* v. *Farrell*, 31 Id. 576.

Evidence that a wife had confessed to her husband her criminal intercourse with the deceased is admissible as showing him to have lost his reason thereby, but independent evidence of her entering a house of assignation with deceased is not admissible. It is not the truth of her statement, but its effect upon the defendant's mind, that is the point to be considered: *People* v. *Hurtado*, 63 Cal. 288.

Irresistible impulse is not the insanity constituting a legal defense: *People* v. *Hoin*, 62 Cal. 120.

Acquittal on the ground of insanity: Sec. 1167.

Submitting question of sanity to a jury: Sec. 1368.

Plea of insanity as an answer to an indictment: See an article by John Ordonaux in 1 Crim. L. Mag. 431.

Subd. 4. Ignorance or mistake to negative criminal intent.—The maxim of the law as to crime is, *Ignorantia facti excusat*. Ignorance or mistake of fact is generally admissible for the purpose of negativing a particular intention. "Ignorance or mistake is another defect of will, when a man, intending to do a lawful act, does that which is unlawful. For here, the deed and the will acting separately, there is not that conjunction between them which is necessary to form a criminal act. But this must be an ignorance or mistake of fact, and not an error in point of law. As if a man, intending to kill a thief or house-breaker in his own house, by mistake kills one of his own family, this is no criminal action; but if a man thinks he has a right to kill a person excommunicated or outlawed wherever he meets him, and does so, this is willful murder. For a mistake in point of law, which every person of discretion not only may but is bound and presumed to know, is in criminal cases no sort of defense:" 4 Bla. Com. 27.

In *Myers* v. *State*, 1 Conn. 502, the defendant was indicted for letting his carriage on Sunday, in a case not of necessity or charity. It was held that if the defendant, when he let his carriage, really believed that a case of necessity or charity existed, there was no guilty intent, and consequently no crime. So where a man, supposing that he was killing a thief in his own house, killed one of his own family, he was held not guilty, "for he did it ignorantly, without intention of hurt to the said Frances:" *Levett's Case*, Cro. Car. 538; see also *United States* v. *Pearce*, 2 McLean, 14; *Commonwealth* v. *Rogers*, 7 Met. 500; *Commonwealth* v. *Kirby*, 2 Cush. 577; *Regina* v. *Alladay*, 8 Car. & P. 136; *Commonwealth* v. *Presby*, 14 Gray, 65; 1 Whart. Crim. L., 8th ed., sec. 87. Where, however, a *scienter* is irrelevant, ignorance or mistake of fact is no excuse. Thus where a statute makes an act indictable, irrespective of guilty knowledge, then ignorance of fact is no defense: *Farmer* v. *People*, 77 Ill. 322; *State* v. *Heck*, 23 Minn. 549; *State* v. *Stimson*, 24 N. J. L. 478; *State* v. *Melville*, 11 R. I. 417; see article by Mr. Bishop in 4 Southern L. Rev. 155 et seq.; 1 Whart. Crim. L., 8th ed., sec. 88.

Subd. 5. Want of knowledge of the act. As to the criminal responsibility resulting from the commission of an unlawful act, by a person who is intoxicated, see section 22, note.

Subd. 6. Indictable negligence.—"A negligent offense is an offense which ensues from a defective discharge of a duty, which defect could have been avoided by the exercise, by the offender, of that care which is usual, under similar circumstances, with prudent persons of the same class. Negligence is of two kinds: *culpa levis*, which is the lack of the diligence and care usual with good specialists of the particular class under the circumstances; and *culpa lata*, which is the lack of the diligence and care exercised by honest and worthy non-specialists dealing with similar objects. In criminal cases this distinction operates mainly to determine the degree of evidence required to convict:" 1 Whart. Crim. L., 8th ed., sec. 125.

In the note to *Rex* v. *Hull*, 1 Ben. & Heard's Lead. Cas. 51, will be found a very profitable discussion upon the subject of criminal negligence. It is there stated that a criminal intent may be, and should be, inferred from any wanton or reckless conduct which results in an injury to another's rights. "For, as every one is by law presumed to intend the natural and ordinary consequences of his acts, if, therefore, he is guilty of that degree of negligence which naturally and ordinarily leads to a certain result, he must be considered to have actually intended such result, and he is criminally responsible, as justly as if his conduct proceeded from actual malicious motives. Accordingly, we find it a well-established principle of criminal law, that if injuries are caused to a person's life or health, by acts which, if willful, would be punishable as crimes, the offender cannot screen himself from criminal responsibility under the plea that such injury was caused by his negligence merely, and without positive malicious motive. The degree of the crime may not be the same as if the act was done with actual malice, but the character of a crime still remains, and the perpetrator is liable to be arraigned at a criminal bar. And wherever a public law imposes a public duty, absolute in its character, and not subject to discretion, the simple omission to perform such duty is indictable:" Id. 51, 52. In *Rex* v. *Carr*, 8 Car. & P. 163, the defendant was employed to cast some cannon. One of them, on being fired, burst, and was sent back to be recast. The defendant, instead of recasting it, filled up the hole with lead, and returned it. On being again fired, it burst the second time, and killed the deceased. Defendant was convicted of manslaughter. So in *People* v. *Fuller*, 2 Park. Cr. 16, it was held that a person who carelessly discharged a gun loaded with ball, into the highway, when it was dark, and thereby unintentionally killed a man who was passing, and whom he did not see, was guilty of manslaughter. See generally, upon this subject, *Rex* v. *Grout*, 6 Car. & P. 629; *Rex* v. *Timmins*, 7 Id. 499; *Queen* v. *Dalloway*, 2 Cox C. C. 273; *Regina* v. *Murray*, 5 Id. 509; *Regina* v. *Dant*, 10 Id. 102; *People* v. *Fuller*, 2 Park. Cr. 16; *Commonwealth* v. *McLaughlin*, 5 Allen, 507.

Indictable omissions.—Mr. Wharton thus classifies such omissions as are indictable:

1. Omissions constituting defects in the performance of duties which have been undertaken. Under this head fall most of the adjudicated cases of so-called omissions; *e. g.*, omissions by switch-tenders to turn switches, of telegraph operators to send messages, of physicians to give required attention to patients, etc.

2. Omissions constituting defects in the performance of duties which have not been *eo nomine* undertaken, *i. e.*, non-contractual duties. 1. From the standpoint of general civic duty, the chief illustration of which is the omission of an accessary after the fact to notify the government of a felony; 2. From the standpoint of official duty, as where an officer whose duty it is to make an arrest neglects to do so; 3. From the police standpoint, as where a person neglects to cover a ditch or well belonging to him, over which he knows travelers are accustomed to pass, or to cleanse a defective drain: 1 Whart. Crim. L., 8th ed., sec. 131. In *Rex* v. *Allen*, 7 Car. & P. 153, and *Rex* v. *Green*, Id. 156, it was held that a negligent act of omission was not punishable criminally; that to be punishable criminally, some act must be done negligently, by which a person is injured, not the mere omission to do an act, although thereby a person is injured. These cases were indictments for manslaughter against the captain and pilot of a steamboat for the death of a person on board of a smack, caused by running the smack down. The want of a sufficient lookout at the bow of the boat was regarded as the cause of the accident. Parke, J., in reply to Chambers, for the prosecution, said: "You must show some act done. You rather state it as if a mere omission on the part of the prisoner in not doing the whole of his duty would be enough; and we are of opinion that is not sufficient." And Alderson, B., said: "There must be some personal act." In *Regina* v. *Lowe*, 4 Cox C. C. 449, 3 Car. & Kir. 123, it was held, contrary seemingly to the last two cases, that an act of omission as well as of commission may be punishable criminally; and this seems to be the better rule, and the one generally adopted. In *Regina* v. *Conde*, 10 Cox C. C. 547, a parent who, having the means to supply necessaries, negligently, though not willfully, withheld from a child food, which if administered would have sustained its life, and in consequence thereof the child died, was guilty of manslaughter. See *Regina* v. *Ryland*, Id. 569. In *Regina* v. *Bubb*, 4 Id. 459, the defendant was indicted for murdering a child by starvation. The charge of William, J., to the jury, as to the criminal responsibility resulting from culpable negligence, is particularly instructive: "If the omission or neglect to perform the duty was malicious, then the indictment would be supported, and the crime of murder would be made out against the prisoner; but if the omission or neglect were simply culpable, but not arising from a malicious motive on the part of the prisoner, then, though it would be your duty to find her guilty, it should be of manslaughter only." The learned judge, after explaining what was meant by the expression "malicious," then proceeded: "But if you are not satisfied that she contemplated the death of the child, then, although guilty of a culpable neglect of duty, it would amount only to the crime of manslaughter. If, on the other hand, you should think either that she did not undertake the duty of supplying the child with proper food and raiment, or that she did not culpably neglect that duty, then you will acquit her altogether." See *State* v. *Hoit*, 23 N. H. 355; *Nixon* v. *People*, 2 Scam. 269. An extended examination of this subject will be found in the note to *Regina* v. *Lowe*, 1 Ben. & Heard's Lead. Cas. 62.

Subd. 7. Coercion by husband.—At common law, a married woman did not lose by the marriage her general capacity for crime. Yet as the law has cast upon her a certain duty to her husband of obedience, of affection, and of confidence, it has compensated her by the indulgence, that if, through constraint from his will, she carries her obedience to the excess of doing unlawful acts, she shall not suffer for them criminally: 1 Bish. Crim. L., sec. 357. The common law goes much further than our code, and not only excuses the wife acting under coercion of her husband from punishment for misdemeanors committed by her, but from most felonies as well: 4 Bla. Com. 28. But certain crimes, on account of their enormity, were excepted; such as treason, murder, and the like: 1 Bish. Crim. L., sec. 361; but the later decisions do not always recognize this exception.

And other crimes, like that of keeping a brothel, are excepted, because peculiar to the female sex: 4 Bla. Com. 29; *State* v. *Bentz*, 11 Mo. 27. A married woman cannot be treated as accessary for receiving her husband, knowing that he has committed a felony, for she is presumed to act under his coercion, and she is not bound, neither ought she, to discover him: 4 Bla. Com. 39.

Coercion is presumed from the mere presence of the husband, but this presumption is only *prima facie*, and is liable to be rebutted by evidence: *Davis* v. *State*, 15 Ohio, 72; *State* v. *Nelson*, 29 Me. 329; *Commonwealth* v. *Eagan*, 103 Mass. 71.

Subd. 8. Threats and menaces.—One of the species of defects of will which renders a person incapable of committing crime, as stated by Blackstone, is that arising from compulsion and necessity. After speaking of the obligation of civil subjection as a species of compulsion or necessity, that writer then proceeds: "Another species of compulsion or necessity is what our law calls *duress per minas*, or threats and menaces, which induce a fear of death or other bodily harm, and which take away for that reason the guilt of many crimes and misdemeanors; at least, before the human tribunal. But then that fear which compels a man to do an unwarrantable action ought to be just and well grounded. . . . . Therefore, in time of war or rebellion, a man may be justified in doing many treasonable acts by compulsion of the enemy or rebels which would admit of no excuse in the time of peace. This, however, seems only, or at least principally, to hold as to positive crime, so created by the laws of society, and which, therefore, society may excuse; but not as to natural offenses, so declared by the law of God, wherein human magistrates are only the executioners of divine punishment. And therefore, though a man be violently assaulted, and hath no other possible means of escaping death but by killing an innocent person, this fear and force shall not acquit him of murder; for he ought rather to die himself than escape by the murder of an innocent. But in such a case he is permitted to kill the assailant; for there the law of nature and self-defense,

its primary canon, have made him his own protector:" 4 Bla. Com. 30; see *Rex* v. *McGowther*, 18 St. Tr. 391; *Rex* v. *Crutchley*, 5 Car. & P. 133; 1 Whart. Crim. L., 8th ed., sec. 94. The subdivision of section 26 of the Penal Code now under consideration was taken from the rule as laid down by Blackstone, with the limitation that the threats or menaces must be such as to give the party reasonable cause to believe his life was in danger, and not such as would only cause bodily harm, other than the taking of life.

27. *Who are liable to punishment.*

SEC. 27. The following persons are liable to punishment under the laws of this state:

1. All persons who commit, in whole or in part, any crime within this state;

2. All who commit larceny or robbery out of this state, and bring to or are found with the property stolen in this state.

3. All who, being out of this state, cause or aid, advise or encourage, another person to commit a crime within this state, and are afterwards found therein.

Penal laws, Operation and effect of, strictly local.—The common law considers crimes as altogether local, cognizable and punishable exclusively in the country where they are committed. No other nation, therefore, has any right to punish them, or is under any obligation to take notice of or to enforce any judgment rendered in such cases by the tribunal having authority to hold jurisdiction within the territory where they are committed: Story on Confl. L., sec. 620; *The Antelope*, 10 Wheat. 123; *Warrender* v. *Warrender*, 9 Bligh, 119; *Ogden* v. *Folliott*, 3 T. R. 733. Crimes are in their nature local, and the jurisdiction of crimes is local: *Rafael* v. *Verelest*, 2 W. Black. 1058. The *lex loci* must needs govern all criminal jurisdiction, from the nature of the thing and the purpose of that jurisdiction: Lord Brougham, in *Warrender* v. *Warrender*, *supra*. All persons within the state, whether residents or aliens, are amenable to the penal laws thereof, and liable to be punished for any infraction of such laws: 1 Whart. Crim. L., 8th ed., sec. 282. "Whoever," says Berner, in his authoritative work on the territorial bounds of penal jurisdiction, "enters into our territory, juridically binds himself to submit to the laws of this territory:" Id., sec. 281; *United States* v. *Wiltberger*, 5 Wheat. 97; *Regina* v. *McCafferty*, 10 Cox C. C. 603; *State* v. *Doxtater*, 47 Wis. 283; Whart. Confl. L., secs. 853, 854; see also sec. 778, *post*.

Stolen property brought into state: See sec. 789, *post*. In England it was early established that when goods were stolen in one country and brought by the thief into another, the latter had no jurisdiction to punish the offender: *Butler's Case*, 13 Co. 55; *Rex* v. *Prowes*, 1 Moo. C. C. 349; *Regina* v. *Debruiel*, 11 Cox C. C. 207; *Regina* v. *Madge*, 9 Car. & P. 29. In *Regina* v. *Debruiel*, *supra*, the defendant was indicted in England for robbing a house in Guernsey and bringing the property to England. Byles, J., speaking for the court, said "that, the case being new, he had taken the opinion of the learned baron in the other court, who agreed with him that the prisoner could not be convicted either of larceny or of receiving. The island of Guernsey was not a part of the United Kingdom, and a larceny committed therein would be in the same position here as if it had been committed in France. Now, clearly, a larceny committed in France could not be taken cognizance of in this country." In several of the United States such jurisdiction is held not to exist unless conferred by statute: *People* v. *Gardner*, 2 Johns. 477; *People* v. *Schenck*, Id. 479; *State* v. *Le Blanch*, 31 N. J. L. 82; *Simmons* v. *Commonwealth*, 5 Binn. 619; *State* v. *Reonnals*, 14 La. Ann. 278. In other states this jurisdiction is held to exist as between the several United States, independent of any statute: 1 Whart. Crim. L., 8th ed., sec. 291, and cases there cited. Statutes similar to subdivision 2 of section 27 have been adopted in a number of the United States, and such enactments are held to be within the constitutional power of each state: *People* v. *Burke*, 11 Wend. 129; *La Vaul* v. *State*, 40 Ala. 44; *Hemmaker* v. *State*, 12 Mo. 453; *State* v. *Williams*, 35 Id. 229; *McFarland* v. *State*, 4 Kan. 68; *State* v. *Seay*, 3 Stew. 123.

Crime committed by person out of state. Although the penal laws of every country are in their nature local, yet an offense may be committed in one sovereignty in violation of the laws of another; and if the offender be afterwards found in the latter state, he may be punished according to the laws thereof, and the fact that he owes allegiance to another sovereignty is no bar to the indictment: Story's Confl. L., sec. 625 b. See article on "Extraterritorial Crime," 4 Southern Law Rev. 676, 690, where the right of a state to punish a person who commits a crime against the laws while out of the state, and subsequently comes within the state, is discussed at length; also *State* v. *Grady*, 34 Conn. 118; *Commonwealth* v. *Smith*, 11 Allen, 243; *People* v. *Adams*, 3 Denio, 190; S. C. affirmed on appeal, 1 N. Y. 173; *Commonwealth* v. *Macloon*, 101 Mass. 1. See sec. 778, note.

TITLE II.

OF PARTIES TO CRIME.

30. *Classification of parties to crime.*

SEC. 30. The parties to crimes are classified as:

1. Principals; and
2. Accessaries.

Parties to crime.—At the common law, persons engaged in the commission of crime were chargeable either as principals in the first degree, principals in the second degree, or as accessaries before or after the fact: 4 Bla. Com. 34, 35; 1 Ch. Crim. L. 256.

Principals: See sec. 31.

Accessaries: See sec. 32.

31. *Who are principals.*

SEC. 31. All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission, and all persons counseling, advising, or encouraging children under the age of fourteen years, lunatics, or idiots, to commit any crime, or who, by fraud, contrivance, or force, occasion the drunkenness of another for the purpose of causing him to commit any crime, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed.

Principals.—In criminal law, a principal is "the actor in the commission of a crime:" Bouv. Law Dict., tit. "Principal." At the common law, principals were of the first or second degree. A principal of the first degree was one who did the act himself, or by the means of an innocent agent. But to constitute him such, it was not necessary that he should be actually present when the offense was consummated; thus in case of murder by poisoning, a man may have been a principal felon by preparing and laying the poison: 1 Ch. Crim. L. 257; 4 Bla. Com. 34. So if the offense was committed in his absence, through the medium of an innocent agent, as where he incited a madman to commit a crime, such person, though absent when the crime was committed, was liable as principal in the first degree: 1 Hale P. C. 514; 1 Ch. Crim. L. 257. Principals in the second degree were those who were present aiding and abetting the commission of the fact. They were generally termed aiders and abettors. A person to be a principal in the second degree need not have been actually present as an eye-witness or ear-witness of the transaction. His presence may have been constructive, as if with the intention of giving assistance he was near enough to afford it should the occasion arise. As where a person waited outside of a house to prevent surprise, while his companions were in the house committing a felony, such presence was sufficient to make him a principal in the second degree: 1 Russ. Crim. L. 27; *Commonwealth* v. *Knapp*, 9 Pick. 496; 20 Am. Dec. 491. By sections 11 and 255 of the criminal practice act, all distinctions between principals in the first and in the second degree, and between principals and accessaries before the fact, was done away with in this state, and all such are punishable as principals: Hittell's Gen. Laws, secs. 1415, 1842; *People* v. *Cryder*, 6 Cal. 23; *People* v. *Bearss*, 10 Id. 68; *People* v. *Outeveras*, 48 Id. 19; *People* v. *Ah Fat*, Id. 62; *People* v. *Cotta*, 49 Id. 166. Sections 11 and 255 just referred to have been reenacted and made a part of this code in sections 31 and 971. In *People* v. *Hodges*, 27 Id. 341, it was held that though the common-law distinction between principal and accessary is in the main obliterated, yet it is retained for the purposes of venue: See *People* v. *Stakem*, 40 Id. 599. Notwithstanding these sections, in proceeding against a person in this state for the commission of a crime, who at the common law would have been chargeable as an accessary, it is better to charge him as such, and not as principal: *People* v. *Schwartz*, 32 Id. 161, 164; *People* v. *Valencia*, 43 Id. 552. A party indicted as principal cannot be convicted upon evidence tending to show that he was an accessary before the fact: *People* v. *Trim*, 39 Id. 75; see *People* v. *Outeveras*, 48 Id. 19. In *People* v. *Campbell*, 40 Id. 142, approved in *People* v. *McGungill*, 41 Id. 429, the correct rule for proceeding against an accessary before the fact is stated: "The accessary is to be indicted, tried, and punished as a principal; nevertheless the particular acts which establish that he aided and abetted the crime, and thus became in law a principal, must be stated in the indictment." An indictment for murder against an accessary before the fact must allege the death of the person assaulted, and that the crime of murder was committed: *People* v. *Crenshaw*, 46 Id. 65. In *People* v. *Vasquez*, 49 Id. 562, the court instructed the jury that "it is no defense to a party associated with others in and engaged in a robbery that he did not propose or intend to take life in its perpetration, or that he forbade his associates to kill, or that he disapproved or regretted that any person was thus slain by his associates. If the homicide in question was committed by one of his associates engaged in the robbery in furtherance of their common purpose to rob, he is as accountable

as though his own hand had intentionally given the fatal blow, and is guilty of murder in the first degree;" and it was held that such instruction was correct. See also *People* v. *Leith*, 52 Id. 251; *People* v. *Woody*, 45 Id. 289; *People* v. *Pool*, 27 Id. 573.

In *People* v. *Jamarillo*, 57 Cal. 111, the accused was not shown to have fired the shot that killed the deceased. He and another, one Ortego, both fired, the defendant's pistol snapping the first time. The court say: "The evidence was sufficient to justify the jury in finding that the defendant may have fired the fatal shot; but if it were otherwise, and it showed only that the fatal shot was fired by Ortego, and that the defendant had urged and encouraged and aided and assisted him to kill the deceased, the legal presumption from such conduct and acts would be that he himself intended to kill the deceased, and in executing that intention by the guilty means which he followed he is considered in law as guilty of the crime which may have been committed in the death of the deceased as though he had actually slain the deceased with his own hand." Section cited and applied in *People* v. *Anthony*, 56 Id. 395.

32. *Who are accessaries.*

SEC. 32. All persons who, after full knowledge that a felony has been committed, conceal it from the magistrate, or harbor and protect the person charged with or convicted thereof, are accessaries.

Accessaries.—An accessary is one who is not the chief actor in the perpetration of the offense, nor present at its performance, but who is in some way concerned therein. At the common law, there were certain crimes to the commission of which there could not be an accessary, but all persons engaged in the commission thereof were chargeable as principals. Of these were treason, and all offenses below a felony: 1 Ch. Crim. L. 261. An accessary before the fact is one that, being absent at the time of the actual perpetration of the felony, procures, counsels, commands, incites, or abets another to commit it: Id. 262. The distinction between accessaries before the fact and principals has been abolished in this state: See note to last section. An accessary after the fact is one who, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon: 4 Bla. Com. 37. In order to charge a person as accessary after the fact, the felony must be completed, he must know the felon to be guilty, and he must receive, relieve, comfort, or assist him: 1 Ch. Crim. L. 264; 1 Whart. Crim. L., 8th ed., sec. 241; *Wren* v. *Commonwealth*, 26 Gratt. 952; *Tully* v. *Commonwealth*, 11 Bush, 154; *People* v. *Hawkins*, 34 Cal. 182. Knowledge of the commission of the felony must be brought home to the accused; and whether he had such knowledge is always a question of fact for the jury: *Wren* v. *Commonwealth*, 26 Gratt. 956. Any assistance given to one known to be a felon, in order to hinder his apprehension, trial, or punishment, is sufficient to make a man accessary after the fact; as that he concealed him in his house, or shut the door against his pursuers until he should have an opportunity to escape; or took money from him to allow him to escape; or supplied him with money, a horse, or other necessaries, in order to enable him to escape; or that the principal was in prison, and the jailer was bribed to let him escape; or conveyed instruments to him to enable him to break prison. This and like assistance to one known to be a felon will constitute one an accessary after the fact: 2 Hale P. C. 619, 621; 2 Hawk. P.C., c. 29, sec. 26; 1 Whart. Crim. L., 8th ed., sec. 241; *Wren* v. *Commonwealth*, 26 Gratt. 956. Merely permitting a felon to escape is not sufficient to impute guilt to the party so doing: 2 Hale P. C. 619. So if a person agree for money not to prosecute the felon; or if, knowing of a felony, fails to make it known to the proper authorities, he will not be punishable as an accessary after the fact: *Wren* v. *Commonwealth*, 26 Gratt. 957; 1 Whart. Crim. L., 8th ed., sec. 242. Neither will a person who receives stolen property, and aids in the disposition of it, knowing it to be stolen, be chargeable as such: *People* v. *Stakem*, 40 Cal. 599. "The true test whether one is accessary after the fact is to consider whether what he did was done by way of personal help to his principal, with the view of enabling his principal to elude punishment; the kind of help appearing to be unimportant:" 1 Bish. Crim. L., 6th ed., sec. 695. At the common law, the conviction of one who has committed the crime must precede that of one charged as accessary. The record of conviction of the principal was *prima facie* evidence of his guilt against a person charged as accessary, but he might show that the principal was not guilty: 1 Archb. Crim. Pl. 78. By statute, however, in most of the states, the offense of an accessary is made substantive and independent, and the accessary may, under such statutes, be tried independently of the principal, though in such cases the guilt of the principal must be alleged and proved: *Pettes* v. *Commonwealth*, 126 Mass. 242; *State* v. *Cassady*, 12 Kan. 550; 1 Whart. Crim. L., 8th ed., sec. 237. In this state it is provided by statute that an accessary to the commission of a felony may be prosecuted, tried, and punished, though the principal may be neither prosecuted nor tried, and though the principal may have been acquitted: Sec. 972; see *People* v. *Newberry*, 20 Cal. 439; *People* v. *Bearss*, 10 Id. 68. It is said that he may be indicted and tried with the principal, or separately: Id.; *People* v. *Campbell*, 40 Id. 129. The indictment must allege that the crime of the principal was committed before it was found and presented: *People* v. *Thrall*, 50 Id. 415.

33. *Punishment of accessaries.*

SEC. 33. Except in cases where a different punishment is prescribed, an accessary is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding two years, or by fine not exceeding five thousand dollars.

Aiding in misdemeanor is a misdemeanor: See sec. 659.

TITLE III.

OF OFFENSES AGAINST THE SOVEREIGNTY OF THE STATE.

37. *Treason, who only can commit.*

SEC. 37. Treason against this state consists only in levying war against it, adhering to its enemies, or giving them aid and comfort, and can be committed only by persons owing allegiance to the state. The punishment of treason shall be death.

Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court: Const. Cal., sec. 20, art. 1; see also Const. U. S., sec. 3, art. 3; Code Civ. Proc., sec. 1968. To constitute the specific crime of treason by levying war, war must be actually levied. Conspiracy to subvert by force the government is not treason. To conspire to levy war and actually to levy war are distinct offenses: *Ex parte Bollinau*, 4 Cranch, 75. To constitute a levying of war, there must be an assemblage of people, with force and arms, to overthrow the government or resist the laws: *United States* v. *Greathouse*, 2 Abb. 364. The term "enemies" applies only to the subjects of a foreign power in open hostility with us, and does not embrace rebels in insurrection against their own government: Id. That two witnesses are required, refers to the proof on the trial, not to proceedings on preliminary examination, or before a grand jury: 2 Wall. jun. 138. Other decisions are: *Druecker* v. *Salomon*, 21 Wis. 621; *United States* v. *Mitchell*, 2 Dall. 348; *United States* v. *Hoxie*, 1 Paine, 265; *United States* v. *Fries*, 2 Whart. St. Tr. 482; *United States* v. *Willberger*, 5 Wheat. 76; *United States* v. *Burr*, 4 Cranch, 470; *United States* v. *Pryor*, 3 Wash. 234; *People* v. *Lynch*, 11 Johns. 549.

Owing allegiance to the state: See Pol. Code, secs. 55, 56.

38. *Misprision of treason.*

SEC. 38. Misprision of treason is the knowledge and concealment of treason, without otherwise assenting to or participating in the crime. It is punishable by imprisonment in the state prison for a term not exceeding five years.

TITLE IV.

OF CRIMES AGAINST THE ELECTIVE FRANCHISE.

41. *Violation of election laws by certain officers a felony.*

SEC. 41. Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment for such acts or omissions is prescribed by this code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or by both.

Corrupt motive necessary.—If a presiding officer at an election, acting honestly from the best judgment he can form, take a vote which turns out to be an illegal one, he is not liable. But if such officer, knowing a vote to be illegal, takes it corruptly, his position cannot protect him from the just punishment of his offense: *State* v. *McDonald*, 4 Harr. (Del.) 555.

42. *Fraudulent registration a felony.*

SEC. 42. Every person who willfully causes, procures, or allows himself to be registered in the great register of any county, knowing himself not to be entitled to such registration, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the county jail or state prison not exceeding one year, or by both. In all cases where, on the trial of a person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the great register of any county, without being

qualified for such registration, the court must order such registration to be canceled.

Stats. 1866, 299, sec. 34.

43. *Refusal to be sworn by or answer questions of judges of election a misdemeanor.*

SEC. 43. Every person who, after being required by the board of judges at any election, refuses to be sworn, or being sworn refuses to answer any pertinent question propounded by such board touching the right of another to vote, is guilty of a misdemeanor. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 423; *took effect July* 1, 1874.]

Stats. 1866, 511, sec. 5. The amendment consisted in omitting after "touching" the words "his right or."

44. *Refusal to obey summons of board of registration a misdemeanor.*

SEC. 44. Every person summoned to appear and testify before any board of registration who willfully disobeys such summons is guilty of a misdemeanor.

Stats. 1865, 652, sec. 15.

45. *Voting without qualification, voting twice, and other election frauds, felonies.*

SEC. 45. Every person not entitled to vote who fraudulently votes, and every person who votes more than once at any one election, or knowingly hands in two or more tickets folded together, or changes any ballot after the same has been deposited in the ballot-box, or adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot-box before or after the ballots therein have been counted; or adds to or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll list, or ballots, or ballot-box, for the purpose of breaking up or invalidating such election; or willfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters lawfully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted—is guilty of felony.

Stats. 1855, 296, sec. 1; 1858, 165, sec. 1.

Not entitled to vote.—A minor cannot be convicted of illegal voting if he honestly believed that he was twenty-one years of age when he voted: *Carter* v. *State*, 55 Ala. 181; *Gordon* v. *State*, 52 Id. 308. But ignorance of the law is no defense. Where a female voted under the belief that the constitution gave her the right, when in fact it did not, it was held no defense that she believed she had a right to vote, and voted in reliance on that belief: *United States* v. *Anthony*, 11 Blatchf. 200. If, however, one states the facts to the election judges, and they decide in favor of his right to vote, their decision would rebut the presumption of guilty knowledge on his part that he had no such right: *State* v. *Boyett*, 10 Ired. 336.

Voting twice.—The act of voting more than once at the same election is not a crime unless it is done knowingly, and with wrong intent: *People* v. *Harris*, 29 Cal. 678. See note of this case under section 22.

46. *Attempting to vote without being qualified.*

SEC. 46. Every person not entitled to vote, who fraudulently attempts to vote, or who, being entitled to vote, attempts to vote more than once at any election, is guilty of a misdemeanor.

Stats. 1850, 111, sec. 101.

47. *Procuring illegal voting a misdemeanor.*

SEC. 47. Every person who procures, aids, assists, counsels, or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote, is guilty of a misdemeanor.

Stats. 1866, 511, sec. 8.

48. *Changing ballots or altering returns by election officers, felonies.*

SEC. 48. Every officer or clerk of election who aids in changing or destroying any poll list, or in placing any ballots in the ballot-box, or taking any therefrom, or adds or attempts to add any ballots to those legally polled at such election, either by fraudulently introducing the same into the ballot-box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix, with the ballots polled any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or allows another to do so when in his power to prevent it, or carries away or destroys, or knowingly allows another to carry away or destroy, any poll list, ballot-box, or ballots lawfully polled, is punishable by imprisonment in the state prison for not less than two nor more than seven years.

Stats. 1858, 165, sec. 2.

49. *Inspectors unfolding or marking tickets, misdemeanors.*

SEC. 49. Every inspector, judge, or clerk of an election who, previous to putting the ballot of an elector in the ballot-box, attempts to find out any name on such ballot, or who opens or suffers the folded ballot of any elector which has been handed in to be opened or examined previous to putting the same into the ballot-box, or who makes or places any mark or device on any folded ballot with the view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such inspector, judge, or clerk has fraudulently or illegally discovered to have been voted for by such elector, is punishable by fine, not less than fifty nor more than five hundred dollars.

Stats. 1863, 398, sec. 1.

50. *Forging or altering returns.*

SEC. 50. Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward where no election was in fact held, or willfully substitutes forged or counterfeit returns of election in the place of the true returns, for a precinct, town, or ward where an election was actually held, is punishable by imprisonment in the state prison for a term not less than two nor more than ten years.

Stats. 1863, 399, sec. 1.

Fraudulent intent.—To warrant the conviction of an election inspector for making a false certificate of the result of the election, it must appear that such certificate was made by him fraudulently, and the fact that a fraud upon the ballot-box was committed by some unknown person, no agency of the inspector being shown, is not sufficient to warrant a conviction: *United States* v. *Hayden*, 52 How. Pr. 471.

51. *Adding to or subtracting from votes given, felony.*

SEC. 51. Every person who willfully adds to or subtracts from the votes actually cast at an election, in any returns, or who alters such returns, is punishable by imprisonment in the state prison for not less than one nor more than five years.

Stats. 1863, 399, sec. 1.

52. *Persons aiding and abetting, punishment of.*

SEC. 52. Every person who aids or abets in the commission of any of the offenses mentioned in the four preceding sections is punishable by imprisonment in the county jail for the period of six months, or in the state prison not exceeding two years. [*Amendment, approved March* 30, 1874; *Amendments* 1873-4, 423; *took effect July* 1, 1874.]

Stats. 1863, 399, sec. 1.

53. *Intimidating, corrupting, deceiving, or defrauding electors a misdemeanor.*

SEC. 53. Every person who, by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly, attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means whatever to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, or furnishes any elector wishing to vote, who cannot read, with a ticket, informing or giving such elector to understand that it contains a name written or printed thereon different from the name which is written or printed thereon, or defrauds any elector at any such election by deceiving and causing such elector to vote for a different person for any office than he intended or desired to vote for; or who, being inspector, judge, or clerk of any election, while acting as such, induces or attempts to induce, any elector, either by menace or reward, or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor.

Stats. 1850, 110.

Influencing elector in voting: See *Regina* v. *Soley*, 11 Mod. 115; *Rex* v. *Cripland*, 11 Id. 387; *Rex* v. *Plympton*, 2 Ld. Raym. 1377; *Rex* v. *Pitt*, 3 Burr. 1335; *Rex* v. *Jolliffe*, 1 East, 154; *Commonwealth* v. *Callaghan*, 2 Va. Cas. 460.

54. *Furnishing money for elections except for specific purposes.*

SEC. 54. Every person who, with intent to promote the election of himself or any other person, either—

1. Furnishes entertainment at his expense to any meeting of electors previous to or during an election;

2. Pays for, procures, or engages to pay for any such entertainment;

3. Furnishes or engages to pay or deliver any money or property for the purpose of procuring the attendance of voters at the polls, or for the purpose of compensating any person for procuring attendance of voters at the polls, except for the conveyance of voters who are sick or infirm;

4. Furnishes or engages to pay or deliver any money or property for any purpose intended to promote the election of any candidate, except for the expenses of holding and conducting public meetings for the discussion of public questions and of printing and circulating ballots, handbills, and other papers previous to such election;

—Is guilty of a misdemeanor.

Pledge to take less than established salary.—Where a candidate for office publicly pledged himself, before election, to perform the duties of the office for one thousand two hundred dollars a year, whereas the fees amounted to two thousand six hundred dollars, and by reason of this offer a sufficient number of voters were induced to vote for him to secure his election, the court held his election void, and said the act amounted to bribery: *State* v. *Collier*, Sup. Ct. Mo.; 3 Pac. C. L. J. 394; see *State* v. *Church*, 5 Or. 375; *State* v. *Purdy*, 36 Wis. 213.

Buying appointment to office: See sec. 73, and note.

55. *Unlawful offers to procure offices for electors.*

SEC. 55. Every person who, being a candidate at any election, offers or agrees to appoint or procure the appointment of any particular person to office, as an inducement or consideration to any person to vote for or procure or aid in procuring the election of such candidate, is guilty of a misdemeanor.

56. *Communicating such offer.*

SEC. 56. Every person, not being a candidate, who communicates any offer, made in violation of the last section, to any person, with intent to induce him to vote for or to procure or aid in procuring the election of the candidate making the offer, is guilty of a misdemeanor.

Stats. 1850, 239, secs. 84–86; 1863, 645, secs. 1–3.

57. *Bribing or offering to bribe members of legislative caucuses, etc.*

SEC. 57. Every person who gives or offers a bribe to any officer or member of any legislative caucus, political convention, committee, primary election, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit, in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another, and every person, member of either of the bodies in this section mentioned, who receives or offers to receive any such bribe, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

58. *Preventing public meetings.*

SEC. 58. Every person who, by threats, intimidations, or unlawful violence, willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions, is guilty of a misdemeanor.

59. *Disturbance of public meetings, misdemeanor.*

SEC. 59. Every person who willfully disturbs or breaks up any public meeting of electors or others, lawfully being held for the purpose of considering public questions, is guilty of a misdemeanor.

60. *Betting on elections.*

SEC. 60. Every person who makes, offers, or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast, either in the aggregate or for any particular candidate, or upon the vote to be cast by any person, is guilty of a misdemeanor.

Wager, what is.—It has been held that where the parties agree that the one who fails in his estimate of the result of an election shall make the other a present of a coat, etc., this constitutes a wager within the meaning of the statue: *Cain* v. *State*, 13 Smed. & M. 456. So a sale of property for a certain sum, payable if a certain person is elected to office, is a wager: *Parsons* v. *State*, 2 Ind. 499; *Commonwealth* v. *Shouse*, 16 B. Mon. 326. Wagers made upon the result of a public election cannot be enforced: *Hill* v. *Kidd*, 43 Cal. 615; see *Johnston* v. *Russell*, 37 Id. 670.

Cases within the statute.—Where the wager is upon the entire result of the presidential ticket, it is within the statute: *Quarles* v. *State*, 5 Humph. 561; *Somers* v. *State*, 5 Sneed, 437. And a bet that a particular candidate will receive a given number of votes, or that he will beat another candidate, or a bet upon the general result, is within the statute: *Commonwealth* v. *Kirk*, 4 B. Mon. 1; *Commonwealth* v. *Pash*, 9 Dana, 31; *State* v. *Cross*, 2 Humph. 301; but not a wager upon an election outside the state: *Hinkerson* v. *Benson*, 8 Mo. 8. The section is not applicable to a bet made on the vote of another state for president: *Morgan* v. *Pettit*, 3 Scam. 529; nor does it apply to a case of betting after the election is held: *State* v. *Mahan*, 2 Ala. 340. Betting on an election is not gaming: *State* v. *Henderson*, 47 Ind. 127.

61. *Violation of election laws by persons not officers.*

SEC. 61. Every person who willfully violates any of the provisions of the laws of this state relating to elections is, unless a different punishment for such violation is prescribed by this code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or by both.

The election laws of the state are found in title 2 of part 3 of the Political Code, secs. 1041-1365, inclusive.

62. *Printing or circulating tickets not in conformity with the election laws.*

SEC. 62. Every person who prints any ticket not in conformity with section eleven hundred and ninety-one of the Political Code, or who circulates or gives to another any ticket, knowing at the time that such ticket does not conform to the provisions of section eleven hundred and ninety-one of the Political Code,

is guilty of a misdemeanor. [*New section, approved March* 23, 1874; *Amendments* 1873–4, 456; *took effect sixtieth day after passage.*]

An Act to prevent the sale of intoxicating beverages on election days.

[Approved March 7, 1874; 1873–4, 297.]

Liquor not to be sold or given away during election day.

SECTION 1. It shall not be lawful for any person or persons keeping a public house, saloon, or drinking-place, either licensed or unlicensed, to sell, give away, or furnish spirituous or malt liquors, wine, or any other intoxicating beverages, on any part of any day set apart, or to be set apart, for any general or special election, by the citizens, in any election district or precinct in any of the counties within the state, where an election is in progress, during the hours when by law in said district or precinct the election polls are required to be kept open.

Misdemeanor.

SEC. 2. Any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor.

SEC. 3. This act shall take effect from and after its passage.

An Act to prohibit "piece clubs," and to prevent extortion from candidates for office.

[Approved March 14, 1878; 1877–8, 236.]

Assessments for election expenses to be voluntary.

SECTION 1. All payments and contributions of money for election expenses, made by candidates for office in this state, shall hereafter be assessed and made by such candidates by voluntary assessment among themselves, and not otherwise, and at meetings to be called for such purpose, at which meetings none but candidates for office at the next ensuing election shall be present or participate.

Candidates paying contributions not agreed upon—Misdemeanor.

SEC. 2. Any person being a candidate for office in this state, who shall, directly or indirectly, pay, or knowingly cause to be paid, any money or other valuable thing to any person, as an assessment or contribution for the expenses of the election at which such person or candidate is to be voted for, except the contribution or assessment so agreed upon by such meeting of candidates, shall be deemed guilty of a misdemeanor, and, upon conviction, punished accordingly.

Committees and conventions not to make assessments.

SEC. 3. It shall not be lawful for any committee, convention, or other association, formed for the purpose of nominating a candidate or candidates for office in this state, to levy, assess, collect, demand, or receive, directly or indirectly, any money or other valuable thing from any candidate or candidates nominated for office by such committee, convention, or other association, either for the expenses of printing or distributing tickets, or for any of the expenses of the election of such candidate or candidates, or as or for the expenses of such nominating convention, committee, or other association, or under or upon any pretense whatsoever.

Misdemeanors by members of committees or conventions.

SEC. 4. Any officer or member of any such committee, convention, or association, or other person, who shall vote for, aid, authorize, assist, or consent to any such levy, assessment, or collection, from any candidate or candidates, shall be deemed guilty of a misdemeanor, and, on conviction, punished accordingly.

Asking money from candidates.

SEC. 5. Any person who shall demand, ask for, collect, or receive, either directly or indirectly, any money or other valuable thing from any candidate or candidates for office in this state, on the ground that such money or other valuable thing has been assessed to such candidate or candidates, or asked for, demanded, or required by any person, nominating convention, committee, or other political association, as or for the costs of printing or distributing tickets, or for the payment of election expenses of any kind or nature whatsoever, or as or for the expenses of such nominating committee, convention, or association, shall for each offense be deemed guilty of a misdemeanor, and on conviction, shall be punished accordingly; but nothing herein contained shall prevent the candidates at any election from assembling together, and voluntarily assessing themselves for any expenses authorized by law for the common good of the ticket, and to collect and disburse the same by agents appointed for such purpose.

Working for candidates in expectation of compensation.

SEC. 6. Any person who shall voluntarily and unsolicited offer to work for and assist, or in any manner whatsoever contribute to the nomination or election of any candidate or other person to any office in this state, for the purpose and with the intent to have such candidate or person pay for, or in any manner compensate such person so offering for such work or services, shall be deemed guilty of a misdemeanor, and on conviction, punished accordingly.

SEC. 7. This act shall apply only to the city and county of San Francisco.

SEC. 8. This act shall take effect and be in force from and after its passage.

TITLE V.

OF CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE STATE.

65. *Acting in a public capacity without having qualified.*

SEC. 65. Every person who exercises any function of a public office without taking the oath of office, or without giving the required bond, is guilty of a misdemeanor. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 423; *took effect July* 1, 1875.]

Oath of office.—"I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the state of California, and that I will faithfully discharge the duties of the office of ——, according to the best of my ability:" Cal. Const., sec. 3, art. 20; see Pol. Code, secs. 904 et seq.

De facto officers, acts of, are not affected by this section: See sec. 66, note.

66. *Acts of officers de facto not affected.*

SEC. 66. The last section shall not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

De facto officers.—See, for a discussion of who are such officers, and the extent to which their acts are valid, the note to *Hildreth* v. *McIntire*, 19 Am. Dec. 63; also *Griffin* v. *Cunningham*, 20 Gratt. 43. See also section 220 of the Political Code, in the note.

67. *Giving or offering bribes to executive officers.*

SEC. 67. Every person who gives or offers any bribe to any executive officer of this state, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable by imprisonment in the state prison not less than one nor more than fourteen years, and is disqualified from holding any office in this state.

Stats. 1863, 645, secs. 1–3.

Bribery, in criminal law, is the offense of giving or taking any undue reward by a person concerned in the administration of justice, or by a public officer, to influence his behavior in his office; 4 Ch. Bla. Com. 139, and note; 1 Russell on Crimes, 154. See definition of "bribe," *ante*, sec. 7, subd. 6. The payment, or offer of payment, of any money, emolument, or thing of value by any person to a sheriff for the release of a prisoner in his custody is bribery: *O'Brien* v. *State*, 6 Tex. App. 665. Any attempt to influence an officer in his official conduct, whether in the executive, legislative, or judicial department of the government, by the offer of a reward or pecuniary consideration, is an indictable offense: *State* v. *Ellis*, 33 N. J. L. 102. An offer to bribe is sufficient to constitute the crime; an actual tender or production of money is not necessary; *People* v. *Ah Fook*, 62 Cal. 493; *Walsh* v. *People*, 65 Ill. 60. The gift, advantage, or emolument must be bestowed for the purpose of inducing the officer to do a particular act in violation of his duty, or as an inducement to favor, or in some manner aid the person offering it, or some other person, in a manner forbidden by law: *Hutchinson* v. *State*, 36 Tex. 293.

Bribery of judicial officer; See sec. 92.

Bribery of legislator: See sec. 85.

68. *Asking or receiving bribes.*

SEC. 68. Every executive officer, or person elected or appointed to an executive office, who asks, receives, or agrees to receive any bribe, upon any agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the state prison not less than one nor more than fourteen years; and in addition thereto, forfeits his office, and is forever disqualified from holding any office in this state.

Stats. 1863, 645, secs. 1–3.

Asking or receiving bribe.—This section and the various pertinent sections of the codes were examined in *People* v. *Markham*, 64 Cal. 157, where a police officer was charged in an information with receiving a bribe in consideration of his not arresting violators of the gambling law. After full deliberation the court held the officer guilty of receiving a bribe, they saying: "We think when a police officer receives money in consideration of his promise that he will not arrest any one of a class of

offenders against the criminal laws, he is guilty of receiving a bribe, because the case of one who has committed the offense and the consequent duty of the officer to arrest is 'a matter which may be brought before him in his official capacity.'"

69. *Resisting officers.*

SEC. 69. Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer in the performance of his duty, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

Resisting officers: See generally, sec. 148. The obstructing the execution of lawful process is an offense against public justice of a very high and presumptuous nature; and more particularly so when the obstruction is of an arrest upon criminal process. So that it has been held that the party opposing an arrest upon criminal process becomes thereby *particeps criminis;* that is, an accessary in felony and a principal in high treason: 4 Bla. Com. 128; 2 Hawk. P. C., c. 17, sec. 1. In an indictment for resisting an officer, it must be distinctly charged that the person resisted was an officer, and was opposed while acting in such capacity, both of which facts must be proved at the trial: *McQuoid* v. *People*, 3 Gilm. 76. The nature of the official duty, the manner of its execution, and the mode of the resistance should be set forth: *State* v. *Burt*, 25 Vt. 373. An indictment for assaulting and obstructing an officer in the discharge of his duties as such, averring that the defendant made an assault upon the officer, and while the latter was in the due and lawful execution of his office did "unlawfully, knowingly, and designedly hinder and oppose him," etc., was held to be sufficient to show that the defendant knew the person assaulted was an officer: *Commonwealth* v. *Kirby*, 2 Cush. 577. A mere allegation that the defendant "resisted" the officer is insufficient, being but a conclusion of law: *Lamberton* v. *State*, 11 Ohio, 282; but see *United States* v. *Batchelder*, 2 Gall. 15; *State* v. *Hooker*, 17 Vt. 658. To constitute the offense, it must appear that the process under which the officer is acting is legal: *Commonwealth* v. *Tobin*, 108 Mass. 426; *Commonwealth* v. *Newton*, 123 Id. 420; *State* v. *Zeibart*, 40 Iowa, 169; *People* v. *Muldoon*, 2 Park. Cr. 13. The officer must be at the time engaged in executing his duties, and the defendant must be notified thereof; and unless there be notification or knowledge, the killing of the officer in resisting the arrest will not be murder: 1 Whart. Crim. L., 8th ed., sec. 648; *Yates* v. *People*, 32 N. Y. 509. If the defendant can prove that he was ignorant that the party resisted was an officer, this is a defense to the indictment: *People* v. *Muldoon*, 2 Park. Cr. 13; *Yates* v. *People*, 32 N. Y. 509; *State* v. *Belk*, 76 N. C. 10; *Johnson* v. *State*, 26 Tex. 117.

Stats. 1860, 125, sec. 1.

70. *Extortion.*

SEC. 70. Every executive or ministerial officer who knowingly asks or receives any emolument, gratuity, or reward, or any promise thereof, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 423; *took effect July* 1, 1874.]

Official extortion.—The act of 1850 defined extortion to be the willful or corrupt receiving by any officer of a reward or fee for the discharge of duty other than that allowed by law, or the act of demanding such reward or fee as a condition precedent to the performance of official duty: Stats. 1850, 242, sec. 107. The offense implies the existence of a corrupt mind, and it is not committed when the fee comes voluntarily in return for real benefits conferred by extra exertions put forth: 2 Bish. Crim. L., secs. 326–337. At common law, a proposal by an official to receive a bribe was an indictable offense: *Walsh* v. *People*, 65 Ill. 58. If an officer exacts payment of his fee before it is due, it is extortion: *Commonwealth* v. *Bagley*, 7 Pick. 279.

The indictment or information must charge the receiving the reward or promise thereof as an inducement to official action; charging that the mayor compelled an official whose salary had been raised, to pay over to him, the mayor, the amount of such increase, charges no offense against this section: *People* v. *Kalloch*, 60 Cal. 116.

Extortion by judicial officer: See sec. 94.

71. *Violation of laws prohibiting certain officers from dealing in scrip, etc., and from being interested in contracts.*

SEC. 71. Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, who violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars, or by imprisonment in the state prison not more than five years, and is forever disqualified from holding any office in this state.

72. *Fraudulently presenting bills or claims to public officers for allowance or payment.*

SEC. 72. Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, town, city, ward, or village board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of felony.

73. *Buying appointments to office.*

SEC. 73. Every person who gives or offers any gratuity or reward, in consideration that he or any other person shall be appointed to any public office, or shall be permitted to exercise or discharge the duties thereof, is guilty of a misdemeanor.

Stats. 1850, 239, sec. 85.

Offering reward for appointment: *Rex* v. *Vaughan*, 4 Burr. 2494; *Rex* v. *Pollman*, 2 Camp. 229; *Commonwealth* v. *Callaghan*, 2 Va. Cas. 460; 2 Bish. Crim. L., secs. 190, 191. See sec. 54, note.

Constitutional provision.—Every person shall be disqualified from holding any office of profit in this state who shall have been convicted of having given or offered a bribe to procure his election or appointment: Const. Cal., sec. 10, art. 20.

74. *Taking rewards for deputation.*

SEC. 74. Every public officer who, for any gratuity or reward, appoints another person to a public office, or permits another person to exercise or discharge any of the duties of his office, is punishable by a fine not exceeding five thousand dollars, and in addition thereto, forfeits his office, and is forever disqualified from holding any office in this state.

Stats. 1850, 239, sec. 85.

75. *Exercising functions of office wrongfully.*

SEC. 75. Every person who willfully and knowingly intrudes himself into any public office to which he has not been elected or appointed, and every person who, having been an executive officer, willfully exercises any of the functions of his office after his term has expired, and a successor has been elected or appointed and has qualified, is guilty of a misdemeanor.

Stats. 1850, 242, sec. 105.

76. *Refusal to surrender books, etc., to successor.*

SEC. 76. Every officer whose office is abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he has resigned or been legally removed from office, willfully and unlawfully withholds or detains from his successor, or other person entitled thereto, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilates, destroys, or takes away the same, is punishable by imprisonment in the state prison not less than one nor more than ten years.

Stats. 1850, 240, sec. 89.

77. *Preceding sections to apply to administrative and ministerial officers.*

SEC. 77. The various provisions of this chapter apply to administrative and ministerial officers in the same manner as if they were mentioned therein.

An Act relating to the intoxication of officers.

[Approved April 15, 1880; 1880, 77.]

SECTION 1. Any officer of a town, village, city, county, or state, who shall be intoxicated while in discharge of the duties of his office, or by reason of intoxication is disqualified for the discharge of or neglects his duties, shall be guilty of a misdemeanor, and on conviction of such misdemeanor shall forfeit his office; and in such case the vacancy occasioned thereby shall be filled in the same manner as if such officer had filed his resignation in the proper office, and it had been accepted by the proper authority; *provided*, such acceptance shall have been necessary to make the office vacant.

SEC. 2. This act shall take effect immediately.

TITLE VI.

OF CRIMES AGAINST THE LEGISLATIVE POWER.

81. *Preventing the meeting or organization of either branch of the legislature.*

SEC. 81. Every person who willfully, and by force or fraud, prevents the legislature of this state, or either of the houses composing it, or any of the members thereof, from meeting or organizing, is guilty of felony.

82. *Disturbing the legislature while in session.*

SEC. 82. Every person who willfully disturbs the legislature of this state, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

83. *Altering draught of bill or resolution.*

SEC. 83. Every person who fraudulently alters the draught of any bill or resolution which has been presented to either of the houses composing the legislature to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of felony.

84. *Altering enrolled copy of bill or resolution.*

SEC. 84. Every person who fraudulently alters the enrolled copy of any bill or resolution which has been passed or adopted by the legislature of this state, with intent to procure it to be approved by the governor, or certified by the secretary of state, or printed or published by the printer of the statutes, in language different from that in which it was passed or adopted by the legislature, is guilty of felony.

85. *Giving or offering bribes to members of the legislature.*

SEC. 85. Every person who gives or offers to give a bribe to any member of the legislature, or to another person for him, or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or withholding his vote, or in not attending the house or any committee of which he is a member, is punishable by imprisonment in the state prison not less than one nor more than ten years.

Stats. 1863, 45, secs. 1, 2. **Bribery: See secs. 67, 68, *ante*.**

86. *Receiving bribes by members of the legislature.*

SEC. 86. Every member of either of the houses composing the legislature of this state who asks, receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner, or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or gives, or offers, or promises to give any official vote in consideration that another member of the legislature shall give any such vote, either upon the same or another question, is punishable by imprisonment in the state prison not less than one nor more than fourteen years, and upon conviction thereof shall, in addition to said punishment, forfeit his office, be disfranchised, and forever disqualified from holding any office or public trust. [*Amend-*

ment, approved April 6, 1880; *Amendments* 1880, 7 (*Ban. ed.* 128); *took effect immediately.*]

The amendment dded all after the word "years."

The section is based upon Stats. 1863, 645, secs. 1, 2, which the code commissioners in their note say was "extended, however, to embrace what is known as 'log-rolling,' or agreements to exchange votes for or against measures pending before the legislature; and also so as to embrace deceits and concealments practiced upon members of the legislature to obtain their votes." And they conclude: "That what, in the technical vocabulary of politicians, is termed 'log-rolling,' is a misdemeanor at common law, punishable by indictment."

87. *Witnesses refusing to attend, testify, or produce papers before legislature or committees thereof.*

SEC. 87. Every person who, being summoned to attend as witness before either house of the legislature or any committee thereof, refuses or neglects, without lawful excuse, to attend pursuant to such summons; and every person who, being present before either house of the legislature or any committee thereof, willfully refuses to be sworn, or to answer any material and proper question, or to produce, upon reasonable notice, any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor.

Stats. 1857, 97, sec. 1.

88. *Members of legislature, in addition to other penalties, to forfeit office, and be disqualified, etc.*

SEC. 88. Every member of the legislature convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office, and is forever disqualified from holding any office in this state.

89. *Obtaining money or property to influence vote of legislator a felony.*

SEC. 89. Every person who obtains, or seeks to obtain, money or other thing of value from another person upon a pretense, claim, or representation that he can or will improperly influence in any manner the action of any member of a legislative body in regard to any vote or legislative matter, is guilty of a felony. Upon the trial no person otherwise competent as a witness shall be excused from testifying as such concerning the offense charged, on the grounds that such testimony may criminate himself, or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony. [*Amendment, approved April* 6, 1880; *Amendments* 1880, 7 (*Ban. ed.* 128); *took effect immediately.*]

TITLE VII.

OF CRIMES AGAINST PUBLIC JUSTICE.

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CHAPTER I.

BRIBERY AND CORRUPTION.

92. *Giving bribes to judges, jurors, referees, etc.*

SEC. 92. Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, or umpire, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the state prison not less than one nor more than ten years.

Bribery of executive officers: See sec. 67. **Bribery generally:** Sec. 67, note.

93. *Receiving bribes by judicial officers, jurors, etc.*

SEC. 93. Every judicial officer, juror, referee, arbitrator, or umpire, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive any bribe, upon any agreement or understanding that his vote, opinion, or decision upon any matters or question which is or may be brought before him for decision shall be influenced thereby, is punishable by imprisonment in the state prison not less than one nor more than ten years.

Stats. 1856, 220, sec. 10; 1863, 645, secs. 84–86.

Misconduct in office.—Public officers are indictable for corruption if they accept or offer to accept, under color of office, any money or other benefit calculated in any way to influence their official course, or any money or valuable thing which is not due at the time when it is taken: 1 Whart. Crim. L., 8th ed., sec. 1572 b; *People* v. *Walsh*, 65 Ill. 58; *Commonwealth* v. *Callaghan*, 2 Va. Cas. 460; see *Ballard* v. *Pope*, 3 U. C. Q. B. 317, 320; *Barefield* v. *State*, 14 Ala. 603. In the latter case it was held, under a statute of Alabama similar to section 92, that to constitute the crime mentioned therein, the matter or question upon which it is attempted to influence the officer's decision must be pending before him at the time the gift or promise is made, or that it was afterwards instituted before him: See also *People ex rel. Purley*, 2 Cal. 564.

94. *Extortion.*

SEC. 94. Every judicial officer who asks or receives any emolument, gratuity, or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

Stats. 1850, 229.

Extortion by executive officer: See sec. 70. **Extortion generally:** See sec. 70, in note.

95. *Improper attempts to influence jurors, referees, etc.*

SEC. 95. Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator or umpire, or appointed a referee, in respect to his verdict in or decision of any cause or proceeding pending or about to be brought before him, either:

1. By means of any communication, oral or written, had with him except in the regular course of proceedings;

2. By means of any book, paper, or instrument exhibited otherwise than in the regular course of proceedings;

3. By means of any threat, intimidation, persuasion, or entreaty; or,

4. By means of any promise, or assurance of any pecuniary or other advantage;

—Is punishable by fine not exceeding five thousand dollars, or by imprisonment in the state prison not exceeding five years. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 424; *took effect July* 1, 1874.]

The original was based on Stats. 1856, 220, sec. 10. The amendment added the words "or proceeding" after "cause," and omitted "upon the trial of such cause" after "proceedings," in subdivisions 1 and 2.

96. *Misconduct of jurors, referees, etc.*

SEC. 96. Every juror or person drawn or summoned as a juror, or chosen arbitrator or umpire, or appointed referee, who either:

1. Makes any promise or agreement to give a verdict or decision for or against any party; or,

2. Willfully and corruptly permits any communication to be made to him, or receives any book, paper, instrument, or information relating to any cause or matter pending before him, except according to the regular course of proceedings; —Is punishable by fine not exceeding five thousand dollars, or by imprisonment in the state prison not exceeding five years. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 424; *took effect July* 1, 1874.]

The original was based on Stats. 1856, 220, sec. 10. The amendment omitted, after "proceedings" in subdivision 2, "upon the trial of such cause."

97. *Justice or constable purchasing judgment.*

SEC. 97. Every justice of the peace or constable of the same township who purchases or is interested in the purchase of any judgment or part thereof on the docket of, or on any docket in possession of, such justice, is guilty of a misdemeanor.

98. *Officers to forfeit and be disqualified from holding office.*

SEC. 98. Every officer convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office, and is forever disqualified from holding any office in this state.

99. *Superintendent of state printing not to be interested.*

SEC. 99. The superintendent of state printing shall not, during his continuance in office, have any interest, directly or indirectly, in any printing of any kind, or in any binding, engraving, or lithographing, or in a contract for furnishing paper or other printing stock or material connected with the state printing; and any violation of these provisions shall subject him, on conviction before a court of competent jurisdiction, to imprisonment in the state prison for a term of not less than two years, nor more than five years, and a fine of not less than one thousand dollars, nor more than three thousand dollars, or by both such fine and imprisonment. [*Amendment, approved April* 1, 1878; *Amendments* 1877–8, 11; *took effect from passage; repealed conflicting acts.*]

100. *Corrupt collusion by the superintendent of state printing.*

SEC. 100. If the said superintendent of state printing shall corruptly collude with any person or persons furnishing paper or materials, or bidding therefor, or with any other person or persons, or have any secret understanding with him or them, by himself or through others, to defraud the state, or by which the state shall be defrauded or made to sustain a loss, contrary to the true intent and meaning of this act, he shall, upon conviction thereof in any court of competent jurisdiction, forfeit his office, and be subject to imprisonment in the state prison for a term of not less than two years, and to a fine of not less than one thousand dollars nor more than three thousand dollars, or both such fine and imprisonment. [*New section, approved April* 3, 1876; *Amendments* 1875–6, 19; *took effect from passage.*]

Section 5 of an act entitled "An act to amend the Political and Penal codes, concerning public printing, and for other purposes," approved April 3, 1876 (see Amendments 1875–6, 16), embraced sections 99 and 100 of the Penal Code. That act also amended a number of the sections of the Political Code, relating to the public printing; and the reference in section 100 is intended to be to that act, and not to the Penal Code.

See also Pol. Code, sec. 538, and the act of April 3, 1876, thereafter referred to.

CHAPTER II.

RESCUES.

101. *Rescuing prisoners.*

SEC. 101. Every person who rescues or attempts to rescue, or aids another person in rescuing or attempting to rescue, any prisoner from any prison, or from any officer or person having him in lawful custody, is punishable as follows:

1. If such prisoner was in custody upon a conviction of felony punishable with death, by imprisonment in the state prison not less than one nor more than fourteen years;

2. If such prisoner was in custody upon a conviction of any other felony, by imprisonment in the state prison not less than six months nor more than five years;

3. If such prisoner was in custody upon a charge of felony, by a fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding two years;

4. If such prisoner was in custody otherwise than upon a charge or conviction of felony, by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding six months.

Rescue is the forcibly and knowingly freeing another from an arrest or imprisonment; and it is generally the same offense in the rescuer as it would have been had the party having the prisoner in custody voluntarily permitted an escape: 4 Bla. Com. 431. It may be consummated by violently taking a prisoner from custody, even though he should take no part in the violence: 1 Whart. Crim. L., 8th ed., sec. 1680; see *State* v. *Cuthbert*, T. U. P. Charlt. 13; *Commonwealth* v. *Filburn*, 119 Mass. 297. By the common law, a rescue of one apprehended for a felony was a felony; and for treason, treason: 4 Bla. Com. 131; 2 Hawk. P. C., c. 18, sec. 10; 1 Whart. Crim. L., 8th ed., sec. 1680. The rescuer must have knowledge that the person rescued was under arrest: *State* v. *Hilton*, 26 Mo. 199; see *Commonwealth* v. *Filburn*, 119 Mass. 297.

102. *Retaking goods from custody of officer.*

SEC. 102. Every person who willfully injures or destroys, or takes or attempts to take, or assists any person in taking or attempting to take, from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

CHAPTER III.

ESCAPES, AND AIDING THEREIN.

105. *Escapes from state prison.*

SEC. 105. Every prisoner confined in the state prison for a term less than for life, who escapes therefrom, is punishable by imprisonment in the state prison for a term equal in length to the term he was serving at the time of such escape; said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison. [*Amendment, approved April* 16, 1880; *Amendments* 1880, 42 (*Ban. ed.* 379); *took effect immediately.*]

Escape.—The deliverance of a person who is lawfully imprisoned out of prison, before such a person is entitled to such deliverance by law: Bouv. Law Dict., tit. Escape. A party who, being imprisoned, obtains his liberty, either by himself or with the aid of others, without force, is more properly called an escape; but where the party obtains his liberty himself, with force, it is called prison-breaking; and if obtained by the assistance of others, with force, it is commonly called a rescue: 2 Archb. Crim. Pl. 1862; 2 Hawk. P. C., c. 17, sec. 5. Hawkins, speaking of escapes, says: "That as all persons are bound to submit themselves to the judgment of the law, and to be ready to be justified by it, whoever in any case refuses to undergo that imprisonment which the law thinks fit to put upon him, and frees himself from it by any artifice before such time as he is delivered by due course of law, is guilty of a high contempt, punishable with fine and imprisonment: 2 Hawk. P. C., c. 17, sec. 5. It is not necessary, however, that a prisoner should use any artifice or force to be guilty of

an escape. If a prisoner go out of his prison without obstruction, either by the consent or negligence of his jailer, or if he escape in any other manner, without using any kind of force or violence, he is guilty of an escape: Id., c. 18, sec. 9; *Riley* v. *State*, 16 Conn. 47. In Arkansas an escape can only be committed by a convict, and to fix that character upon the defendant, the state must prove his conviction by the record, and his personal identity *aliunde*: *State* v. *Murphy*, 10 Ark. 74. An informality in the commitment of a prisoner is no justification for breaking the prison to effect an escape: *State* v. *Murray*, 15 Me. 100; *Regina* v. *Waters*, 12 Cox C. C. 390. The question of the defendant's guilt or innocence of the crime of which he is charged is not relevant to the issue, on the trial of an indictment for an escape: 2 Hawk. P. C., c. 18, sec. 16; *Commonwealth* v. *Miller*, 2 Ashm. 61; see *People* v. *Washburn*, 10 Johns. 160. It is enough to sustain the prosecution if the process is regular: 2 Whart. Crim. L., 8th ed., sec. 1674. Assistance to one breaking prison or escaping from custody is governed by the rules applicable to principals and accessaries. If the prison breach is a felony, a person supplying the means to effect it, or waiting to carry off the prisoner after his escape, is accessary before or after the fact, as the case may be. If a prison breach is a misdemeanor, then a person so assisting is a principal in the misdemeanor: 2 Whart. Crim. L., 8th ed., sec. 1677. See section 109 of this code for the punishment imposed in this state upon a person who assists a prisoner confined in any prison, or in the lawful custody of any officer or person, to escape.

Rescue: Sec. 101, note.

Escape suffered by officers: Sec. 108.

Killing escaped prisoner is justifiable when: See sec. 196.

106. *Attempt to escape from state prison.*

SEC. 106. Every prisoner confined in the state prison for a term less than for life, who attempts to escape from such prison, is guilty of a felony, and on conviction thereof, the term of imprisonment therefor shall commence from the time such convict would otherwise have been discharged from said prison. [*Amendment, approved April* 16, 1880; *Amendments* 1880, 42 (*Ban. ed.* 379); *took effect immediately.*]

107. *Escapes from other than state prison.*

SEC. 107. Every prisoner confined in any other prison than the state prison, who escapes or attempts to escape therefrom, is guilty of a misdemeanor.

108. *Officers suffering convicts to escape.*

SEC. 108. Every keeper of a prison, sheriff, deputy sheriff, constable, or jailer, or person employed as a guard, who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of any prisoner in custody, is punishable by imprisonment in the state prison not exceeding ten years, and fine not exceeding ten thousand dollars.

109. *Assisting prisoners to escape.*

SEC. 109. Every person who willfully assists any prisoner confined in any prison or in the lawful custody of any officer or person to escape, or in an attempt to escape from such prison or custody, is punishable as provided in section one hundred and eight of this code.

110. *Carrying into prison things useful to aid in an escape.*

SEC. 110. Every person who carries or sends into a prison anything useful to aid a prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as provided in section one hundred and eight of this code.

111. *Costs of trials for escapes or for crimes committed in state prison to be charged against state.*

SEC. 111. Whenever a trial shall be had of any person under any of the provisions of sections one hundred and five and one hundred and six of this code, and whenever a convict in the state prison shall be tried for any crime committed therein, the county clerk of the county where such trial is had shall make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such convict, properly certified to by

a superior judge of said county, which statement shall be sent to the board of state prison directors for their approval; and after such approval, said board shall cause the amount of such costs to be paid out of the money appropriated for the support of the state prison to the county treasurer of the county where such trial was had. [*New section, approved April* 6, 1880; *Amendments* 1880, 9 (*Ban. ed.* 130); *took effect immediately.*]

CHAPTER IV.

FORGING, STEALING, MUTILATING, AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

113. *Larceny, destruction, etc., of records by officers having them in custody.*

SEC. 113. Every officer having the custody of any record, map, or book, or of any paper of proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper, or proceeding, or who permits any other person so to do, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

Public records, falsification of.—In *Matter of Corryell*, 22 Cal. 178, it was held that an engrossed copy of a legislative bill of any session prior to that of 1862 was not a public record within the meaning of section 87 of an act concerning crimes and punishments, Hittell's Gen. Laws, sec. 1487, the falsification of which was punishable as provided by that section. In *People* v. *Granice*, 50 Cal. 447, the defendant, during the progress of the trial, offered to prove that certain words had been inserted in the indictment, and that certain other words of the indictment had been changed since it was filed and became a record of the court. This offer was refused, and the supreme court, in reviewing this ruling, said: "It is the duty of either party to bring to the attention of the court any alteration of the record of a pending proceeding promptly, and at the earliest opportunity at which it can be done after the alteration has come to his knowledge. In this case that duty was as incumbent on the prosecution as on the defendant. Although the defendant did not promptly move in the matter, he is not thereby precluded from showing that alterations have been made in the indictment. The indictment, as it stood before the alleged alterations were made, only charged the defendant with the crime of manslaughter; but as altered, it charged him with the crime of murder. The court, under that indictment, had no jurisdiction to try him for any crime other than such as was charged in the indictment when it was filed by the grand jury."

114. *Larceny, destruction, etc., of records by other persons.*

SEC. 114. Every person not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding one hundred dollars, or by both.

115. *Offering false or forged instruments to be filed of record.*

SEC. 115. Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, or registered, or recorded under any law of this state, or of the United States, is guilty of felony.

116. *Adding names, etc., to jury lists.*

SEC. 116. Every person who adds any names to the list of persons selected to serve as jurors for the county, either by placing the same in the jury-box, or otherwise, or extracts any name therefrom, or destroys the jury-box, or any of the pieces of paper containing the names of jurors, or mutilates or defaces such names so that the same cannot be read, or changes such names on the pieces of paper, except in cases allowed by law, is guilty of felony. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 425; *took effect July* 1, 1874.]

117. *Falsifying jury lists, etc.*

SEC. 117. Every officer or person required by law to certify to the list of persons selected as jurors, who maliciously, corruptly, or willfully certifies to a false or incorrect list, or a list containing other names than those selected, or who, being required by law to write down the names placed on the certified lists on separate pieces of paper, does not write down and place in the jury-box the same names that are on the certified list, and no more and no less than are on such list, is guilty of a felony.

CHAPTER V.

PERJURY AND SUBORNATION OF PERJURY.

118. *Perjury defined.*

SEC. 118. Every person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered, willfully, and contrary to such oath, states as true any material matter which he knows to be false, is guilty of perjury.

Code commissioners' explanation.—The commissioners quote the definition of perjury given in the statute of 1850, sec. 82, and after citing numerous special instances in which false swearing would be perjury, say: "To simplify the existing law, and expunge from the statutes these multiplied provisions, covering nearly the same ground, a subsequent section (secs. 151, 152, *post*) declares it to be a misdemeanor to administer or take any oath except in cases there specified. The sections in this subdivision extend the penalties of perjury to violation of all oaths authorized by law, as well as to violations of oaths required. 'Testify, declare, depose, or certify.' It is not intended to confine the definition of perjury to testimony and depositions, strictly so called. On the contrary, the section defining perjury is broad enough to embrace every class of statement which by law may be attested by an oath applying to the particular statement, in distinction from the general oath taken by public officers. Nearly every mode of oral statement under oath is embraced by the term 'testify,' and nearly every written one in the term 'depose.' But as doubts may arise as to the full extension of these terms in peculiar cases, the commissioners have added 'declare' and 'certify,' in order that all modes of statement may be clearly included." The sections above referred to, 151 and 152, were repealed in 1874.

Perjury, definition of.—At common law, perjury is the taking of a willfully false oath by one who, being lawfully sworn by a competent court to depose the truth in any judicial proceeding, swears absolutely and falsely in a matter material to the point in question, whether he be believed or not: 1 Hawk. P. C., c. 69, sec. 1; 2 Whart. Crim. L., 7th ed., sec. 2198; 3 Russell on Crimes, 1; *De Bernie* v. *State*, 19 Ala. 23; *Pankey* v. *People*, 1 Scam. 80; *Pollard* v. *People*, 69 Ill. 148; *Commonwealth* v. *Grant*, 116 Mass. 17; *Nelson* v. *State*, 32 Ark. 192.

Materiality.—The false oath must be to something material to the issue: *People* v. *Perazzo*, 64 Cal. 106; and the evidence given must be prejudicial to some one; otherwise, however willful it may be, it will not be perjury: *People* v. *McDermott*, 8 Id. 288; *Plath* v. *Braunsdorff*, 40 Wis. 107. But it need not be the fact directly in issue. If a person falsely and corruptly swears as to any material circumstance which has a legitimate tendency to prove or disprove a material fact, it is perjury: *Commonwealth* v. *Grant*, 116 Mass. 17. Where one swearing as to a material fact denies that he had made statements different from his testimony, a charge of perjury may be based upon such denial: *People* v. *Barry*, 63 Cal. 63. Where one willfully testifies upon a trial that he has not made certain statements concerning a matter material to the case, when in fact such statements were made by him on the trial of another case, he is guilty of perjury, though the statements made were immaterial in the first case: *State* v. *Mooney*, 65 Mo. 494. The false statement must be willfully and corruptly made. Accidental and unintentional false swearing is not perjury: *Bell* v. *Senneff*, 83 Ill. 122; *Nelson* v. *State*, 32 Ark. 192; *United States* v. *Passmore*, 4 Dall. 378. If a witness state the truth to the writer of an affidavit, but the statement is written out erroneously, the witness is not guilty of perjury in swearing to such affidavit, if he did not know it contained the false statements: *Jesse* v. *State*, 20 Ga. 156.

Doctrine of materiality in the law of perjury: See an able article bearing this title in 3 Crim. Law Mag. 459.

Not confined to actions in courts.—The word "case," used in statutes defining the crime of perjury, is not confined to suits or proceedings strictly in court. There are many instances where the laws authorize an oath to be administered when no suit is pending, and the willful taking of a false oath in such instances is perjury: *United States* v. *Volz*, 14 Blatchf. 15. But the officer or tribunal administering the oath must have legal and competent authority to do so, or the person taking the oath cannot be convicted, however false the statement may be: *Van Dusen* v. *People*, 78 Ill. 645; *Biggerstaff* v. *Commonwealth*, 11

Bush, 169. See section 121 as to oaths administered in an irregular manner.

In *Ex parte Carpenter*, 64 Cal. 267, Carpenter appeared before a notary with a deed signed by one Bouchard; the notary, not knowing Carpenter, swore him, and he, testifying that he was Bouchard, certified to the acknowledgment. The court held this amounted to a probable cause for holding Carpenter for perjury.

Indictment or information: See sec. 966. If the indictment charge that defendant in a certain proceeding, describing it, "did willfully, corruptly, and falsely swear," etc., but does not allege that the perjury was committed "feloniously," it is nevertheless sufficient: *People* v. *Parsons*, 6 Cal. 487. The indictment should aver that the false oath was made before an officer having authority: *State* v. *Dayton*, 23 N. J. L. 49. If the information shows the administering of the oath, that it was before a person duly authorized, in a case in which it was properly administered, and that the statement was willfully false and in a material matter, it will be sufficient, although the pleading does not, in so many words, say the matter was material: *People* v. *Kelly*, 59 Cal. 372.

Evidence.—On the trial the prosecution may prove by oral evidence what the defendant swore to, in respect to which the charge of perjury is made: *People* v. *Curtis*, 50 Cal. 95; *Nelson* v. *State*, 32 Ark. 192. Though the reporter's notes are *prima facie* evidence of the testimony given, yet such notes are inadmissible where the testimony was taken through an interpreter: *People* v. *Lee Fat*, 54 Cal. 527. Evidence that defendant was intoxicated at the time of the happening of the transaction, in reference to which he is charged with having testified falsely, is proper, in order to determine whether he knowingly testified falsely: *Lytle* v. *State*, 31 Ohio St. 196. A record of acquittal of a charge of perjury has been held to be conclusive evidence that the matter testified to was true: *Bell* v. *Senneff*, 83 Ill. 122. In this state perjury must be proved by the testimony of two witnesses, or one witness and corroborating circumstances: Sec. 1968, Code Civ. Proc.; see also *People* v. *Young*, 31 Cal. 563; *People* v. *Quinn*, 18 Id. 122; *Ex parte McCarthy*, 29 Id. 396; *People* v. *Green*, 54 Id. 592.

Instruction.—It is error to charge the jury, on a trial for perjury, that before they can believe a certain witness they must be entirely satisfied beyond a reasonable doubt; the witness is not on trial for perjury, and that he testifies falsely in order to convict the accused need be proved only by a preponderance of evidence: *People* v. *Mitchell*, 11 Pac. C. L. J. 506.

119. *Oath defined.*

SEC. 119. The term "oath," as used in the last section, includes an affirmation, and every other mode authorized by law of attesting the truth of that which is stated.

Manner of administering oath.—That mode of swearing which the witness believes most obligatory may be adopted. No special form of oath or affirmation is required: Code Civ. Proc., secs. 2093–2097; see also sec. 121, *post*.

120. *Oath of office.*

SEC. 120. So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the two preceding sections.

Oath of office: See Pol. Code, secs. 904 et seq.

121. *Irregularity of administering.*

SEC. 121. It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

Manner of administering oath: See note to sec. 119. Irregularity of administering oath no defense: *Ex parte Carpenter*, 64 Cal. 267.

"3 Whart. Crim. L., secs. 2205–2207. Two classes of cases are important to be considered. One class is where an oath is administered in an irregular manner, but the person taking it supposes at the time that all the formalities of law are being complied with. Such were the circumstances in *People* v. *Cook*, 8 N. Y. 67, where challenged voters were sworn upon a copy of Watts's Psalms and Hymns, the book being supposed to be the bible. As to these cases the decision in *People* v. *Cook* is that the oath is valid, and the party is as amenable to the consequences of perjury as if it had been administered in strict conformity to the statute. Another class of cases is where the person taking the oath evades some formality of the oath with intent to escape its obligation; as where he kisses his thumb instead of the book. In these cases his fraud should not be permitted to secure him against punishment. The section in the text therefore prescribes the same rule for both classes:" Code commissioners' note.

122. *Incompetency of witness no defense.*

SEC. 122. It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition or certificate.

Incompetency of witness is no defense: *Ex parte Carpenter*, 64 Cal. 267.

123. *Witness's knowledge of materiality of his testimony not necessary.*

SEC. 123. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

124. *Making depositions, etc., when deemed complete.*

SEC. 124. The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.

125. *Statement of that which one does not know to be true.*

SEC. 125. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

126. *Punishment of perjury.*

SEC. 126. Perjury is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

127. *Subornation of perjury.*

SEC. 127. Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

Subornation of perjury.—To constitute the crime of subornation of perjury, the party charged must have procured the commission of the perjury by inciting, instigating, or persuading the guilty party to commit the crime. Accordingly, it has been decided that to call a witness knowing that he will testify falsely is not sufficient to constitute this crime: *Commonwealth* v. *Douglass*, 5 Met. 241; 2 Whart. Crim. L., 8th ed., sec. 1329.

Indictment, sufficiency of.—It is sufficient to charge the commission of the offense by a general averment, and it is not necessary that the particular fact which the defendant attempted to procure the witness to swear to should be specifically stated: *State* v. *Holding*, 1 McCord, 31; Tremain P. C. 169; see also *Elkin* v. *People*, 28 N. Y. 177.

Attempt to suborn perjury is not the generic name of any class of offenses, and if the information or indictment does not allege facts constituting a crime, it is demurrable: *People* v. *Thomas*, 63 Cal. 482.

A civil action will not lie for suborning a witness to swear falsely in a criminal prosecution against the plaintiff: *Taylor* v. *Bidwell*, 3 West Coast Rep. 479.

128. *Procuring the execution of innocent person.*

SEC. 128. Every person who, by willful perjury or subornation of perjury, procures the conviction and execution of any innocent person, is punishable by death.

"**This section is founded** on the eighty-third of the crimes-and-punishment act, which declares that any person so procuring the conviction and execution of an innocent person 'shall be deemed guilty of murder.' The offense certainly does not fall within any known definition of murder, and is repugnant to the definition of murder given in our statutes. The commission have therefore deemed it advisable to omit the words quoted, and to affix the punishment to the act itself:" Commissioners' note.

CHAPTER VI.

FALSIFYING EVIDENCE.

132. *Offering false evidence.*

SEC. 132. Every person who, upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or antedated, is guilty of felony.

133. *Deceiving a witness.*

SEC. 133. Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any witness or person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

134. *Preparing false evidence.*

SEC. 134. Every person guilty of preparing any false or antedated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony.

135. *Destroying evidence.*

SEC. 135. Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

136. *Preventing or dissuading witness from attending.*

SEC. 136. Every person who willfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding, or inquiry authorized by law, is guilty of a misdemeanor.

Dissuading witness from appearing.—To dissuade a witness from attending a trial is undoubtedly a contempt of court, for which a party may be punished. It is also a criminal act, punishable by indictment: 2 Whart. Crim. L., 8th ed., sec. 1333; *State* v. *Carpenter*, 20 Vt. 9. The materiality of the testimony of the witness dissuaded from attending need not be proved: *State* v. *Early*, 3 Harr. (Del.) 562; *Commonwealth* v. *Reynolds*, 14 Gray, 87. Nor is it necessary to show that the witness was summoned or required to appear: Id.

137. *Bribing witnesses.*

SEC. 137. Every person who gives or offers, or promises to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any person to give false or withhold true testimony, is guilty of a felony. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 425; *took effect July* 1, 1874.]

Offering to bribe witness: See *Jackson* v. *State*, 43 Tex. 421; and *State* v. *Hughes*, Id. 518. The offense was originally declared a misdemeanor.

138. *Witness receiving or offering to receive bribe.*

SEC. 138. Every person who is a witness, or is about to be called as such, who receives, or offers to receive, any bribe, upon any understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial or proceeding upon which his testimony is required, is guilty of a felony. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 425; *took effect July* 1, 1874.]

"The preceding chapter is founded upon section 3 of the act of April 27, 1863, Stats. 1863, 645, and sections 84 and 86 of the crimes-and-punishment act, as amended by the act cited:" Commissioners' note.

CHAPTER VII.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

142. *Officer refusing to receive or arrest parties charged with crime.*

SEC. 142. Every sheriff, coroner, keeper of a jail, constable, or other peace-officer, who willfully refuses to receive or arrest any person charged with a criminal offense, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

143. *Public administrator, neglect of duty or violation of duty by.*

SEC. 143. Every person holding the office of public administrator, who willfully refuses or neglects to perform the duties thereof, or who violates any provision of law relating to his duties or the duties of his office, for which some other punishment is not prescribed, is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding two years, or both.

Stats. 1851, 488, sec. 303.

144. *Receiving compensation for arresting fugitives from justice.*

SEC. 144. Every person who violates any of the provisions of section fifteen hundred and fifty-eight is guilty of a misdemeanor.

The section referred to relates to fees or compensation allowed persons for pursuing and securing the extradition of fugitives from justice.

145. *Delaying to take person arrested before a magistrate.*

SEC. 145. Every public officer or other person, having arrested any person upon a criminal charge, who willfully delays to take such person before a magistrate having jurisdiction, to take his examination, is guilty of a misdemeanor.

"This section is intended to enforce the well-understood duty of officers or private persons who have made arrests. The arrested person is entitled to a speedy hearing upon the charge preferred against him. The subject might, indeed, be considered covered, so far as public officers are concerned, by the general provisions elsewhere reported (sec. 176), making it a misdemeanor for an officer willfully to omit an official duty. But there would still remain cases in which a private person is authorized to make an arrest:" Commissioners' note.

146. *Making arrests, etc., without lawful authority.*

SEC. 146. Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, arrests any person, or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements, without a regular process or other lawful authority therefor, is guilty of a misdemeanor.

147. *Inhumanity to prisoners.*

SEC. 147. Every officer who is guilty of willful inhumanity or oppression toward any prisoner under his care or in his custody is punishable by fine not exceeding two thousand dollars, and by removal from office.

See note to sec. 149.

148. *Resisting public officers in the discharge of their duties.*

SEC. 148. Every person who willfully resists, delays, or obstructs any public officer in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

Resisting officers: Sec. 69, and note.

Indictment under this section must show that the warrant of arrest which the constable was trying to serve at the time he was resisted was issued by a justice having jurisdiction to issue the warrant, and that the offense was committed in the county: *People* v. *Craig*, 59 Cal. 370.

149. *Assaults, etc., by officers, under color of authority.*

SEC. 149. Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

Officer, liability of, for assaulting person under color of authority.—An officer in the service of criminal or other process is not justified in the use of excessive violence, unless necessary in order to properly discharge the duties imposed upon him. In arresting a person, or in the performance of any official act, great care should be taken to use only such force as may be necessary. A person, although a wrong-doer, is not compelled to submit to any unreasonable or unnecessary violence. Notwithstanding a person may have violated the law, he does not for that reason forfeit all right to self-protection. The object of this section is to prevent officers from assaulting or beating persons, and in justification thereof asserting that it was done under the color of the authority imposed upon them by virtue of such office. The extent to which a wrong-doer is justified in repelling any excessive violence is well illustrated by the case of *People* v. *Gulick*, Hill & D. Supp. 229. The defendant was indicted for an assault and battery upon one Catherine Peck. Defendant, claiming to be a special deputy, attempted to remove certain furniture belonging to the husband of Catherine, that had been levied upon by him by virtue of a court-martial's warrant, when she assaulted him, and to protect himself he committed the assault complained of. It appeared that the defendant, being a non-resident of the state, was not authorized to act as special deputy, and that his appointment was for that reason void. The recorder charged the jury that the defendant having no authority to act as special deputy, he was a trespasser in entering Peck's house; and that Mrs. Peck had a right to resist the execution of the warrant, and that defendant was liable to conviction for an assault if he exercised the least force in opposition to her resistance. On appeal, in reviewing this instruction, the court said: "It may be admitted, for the purpose of the decision, that the defendant was a trespasser in entering the house of Peck; but even a trespasser is not bound to submit quietly to unreasonable or unnecessary violence. Though in the wrong at the time, he does not thereby forfeit all right to self-protection, nor lie under obligation to give himself up, a resistless victim, to beating and bruising at the will of the injured party. On the contrary, he may, within acknowledged principles, protect himself by force from unreasonable or wanton violence committed or sought to be committed by the party trespassed upon. He can lawfully use no more force than is necessary and proper to prevent the trespass upon his rights:" See *Harrison* v. *Hodgson*, 10 Barn. & Cress. 445; 1 Whart. Crim. L., 8th ed., secs. 648–650.

150. *Refusing to aid officers in arrest, etc.*

SEC. 150. Every male person above eighteen years of age who neglects or refuses to join the posse comitatus or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or by neglecting to aid and assist in retaking any person who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge, or justice of the peace, or other officer concerned in the administration of justice, is punishable by fine of not less than fifty nor more than one thousand dollars.

An Act to authorize boards of supervisors to pay the expenses of posse comitatus in criminal cases.
[Approved April 16, 1880; 1880, 120 (Ban. ed. 341).]

Expenses of posse comitatus.

SECTION 1. The board of supervisors of any county may allow, in their discretion, such compensation as they may deem just, to defray the necessary expenses that have been incurred by a *posse comitatus* in criminal cases; *provided*, no claim shall be allowed for expenses which have not been incurred within one year before such allowance.

SEC. 2. This act shall take effect and be in force from and after its passage.

Citizens aiding officers in making arrests.—It is incumbent upon every private citizen to aid and assist officers in the lawful discharge of their duties. It is as imperative upon him to render such assistance as it is the duty of an officer to preserve the peace. A citizen has no discretion whatever in the matter, and if he fails to assist an officer when required, he renders himself liable to punishment, the same as any other person who violates the law: *Res.* v. *Montgomery*, 1 Yeates, 419; *Comfort* v. *Commonwealth*, 5 Whart. 437; *Regina* v. *Brown*, 1 Car. & M. 314; 1 Whart. Crim. L., 8th ed., sec. 652a; Whart. Crim. Pl. & Pr., sec. 17, note. In *Regina* v. *Brown*, 1 Car. & M. 314, it was held that in order to convict a person of refusing to assist an officer in quelling a riot, three things must be proved: 1. That the officer saw a breach of the peace committed; 2. That there was a reasonable necessity for calling on the defendant for his assistance; and 3. That when duly called upon to assist the

defendant, without any physical impossibility or lawful excuse, refused to do so. Whether the aid of the party called upon would have proved sufficient or useful is not the criterion; and it is no defense to a party that his aid would have done no good. In the note to section 17 of Wharton's Criminal Pleading and Practice, 8th edition, will be found a very able exposition of the law upon this subject, by Judge King of Philadelphia, on the occasion of the Philadelphia riots in 1844.

151, 152. *Administering and taking oath, when a misdemeanor.*

Sections 151 and 152 were repealed by act approved March 30, 1874; Amendments 1873-4, 425; took effect July 1, 1874. The repealed sections were as follows:

"SEC. 151. Every person who takes an oath before an officer, or person authorized by law to administer oaths, except when such oath is required or authorized by law, or is required by the provisions of some contract as the basis of or in proof of a claim, or when the same has been agreed to be received by some person as proof of any fact in the performance of any contract, obligation, or duty, instead of other evidence, is guilty of a misdemeanor.

"SEC. 152. Every officer who administers an oath to another person, or who makes and delivers any certificate that another person has taken an oath, except when such oath is required or authorized by law, or is required by the provisions of some contract as a basis of or in proof of a claim, or when the same has been agreed to be received by some person as a proof of any fact in the performance of any contract, obligation, or duty, instead of other evidence, is guilty of a misdemeanor."

The note appended to section 152 by the commissioners was as follows:

"It is known that, in many cases, persons employ the sanctity of a judicial oath to gain credence for their statements, yet escape punishment for falsity in those statements because the penalties of perjury do not extend to mere voluntary oaths. Sworn statements are frequently published to advance the sales of a particular article, or to support one side in a public controversy. It is the intention of the two sections above to restrict the practice of taking or administering these voluntary oaths. The provisions allow affidavits to be made in proof of loss under policies of insurance; in proof of facts necessary to show title between vendor and purchaser of real property; and in all the other cases where there is an agreement to receive them instead of pursuing the ordinary methods of legal investigation. And by antecedent provisions of this code the penalties of perjury are extended to willful false swearing in these cases, as well as in cases where the oath is required by law: See sec. 118, and note."

153. *Compounding crimes.*

SEC. 153. Every person who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement or promise thereof, upon any agreement or understanding to compound or conceal such crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for by law in which crimes may be compromised by leave of court, is punishable as follows:

1. By imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, where the crime was punishable by death or imprisonment in the state prison for life;

2. By imprisonment in the state prison not exceeding three years, or in the county jail not exceeding six months, where the crime was punishable by imprisonment in the state prison for any other term than for life;

3. By imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, where the crime was a misdemeanor.

Compounding crimes.—To compound a crime is to agree not to prosecute it, when the party so agreeing knows it to have been committed: 2 Whart. Crim. L., 8th ed., sec. 1559; 4 Bla. Com. 124-136. At the common law, a party guilty of this crime was punishable as an accessary. Where a party received a note, signed by a person guilty of larceny, as a consideration for non-prosecution, the offense was held complete: *Commonwealth* v. *Pease*, 16 Mass. 91; see *Ex parte Butt*, 13 Cox C. C. 374. The mere retaking by the owner of stolen goods is no offense, unless there is an agreement not to prosecute the thief: 1 Ch. Crim. L. 4; 1 Hale P. C. 619; 1 Hawk. P. C., c. 59, sec. 7; *Regina* v. *Stone*, 4 Car. & P. 379; *Plumer* v. *Smith*, 5 N. H. 553. To compound a misdemeanor is a perversion or defeating of public justice, the same as the compounding a felony, and was an indictable offense at the common law: *Jones* v. *Rice*, 18 Pick. 440. In *Keir* v. *Leeman*, 6 Q. B. 308, it was held that the law will permit a compromise of an offense, though made the subject of a criminal prosecution, for which offense the injured party might recover damages in an action; but if the offense is of a public nature, no agreement can be valid that is founded on the consideration of suppressing a prosecution for it. On an indictment for compounding a felony, the record of the conviction is *prima facie* evidence of the felony, but not conclusive: *State* v. *Duhammel*, 2 Harr. (Del.) 532. It is not necessary, however, that the principal offender should have been convicted to sustain the indictment: *People* v. *Buckland*, 13 Wend. 592.

Compromising certain offenses: See secs. 1377-1379, and notes.

154. *Debtor fraudulently concealing his property.*

SEC. 154. Every debtor who fraudulently removes his property or effects out of this state, or fraudulently sells, conveys, assigns, or conceals his property, with intent to defraud, hinder, or delay his creditors of their rights, claims, or demands, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both.

155. *Defendant fraudulently concealing his property.*

SEC. 155. Every person against whom an action is pending, or against whom a judgment has been rendered for the recovery of any personal property, who fraudulently conceals, sells, or disposes of such property, with intent to hinder, delay, or defraud the person bringing such action or recovering such judgment, or with such intent removes such property beyond the limits of the county in which it may be at the time of the commencement of such action or the rendering of such judgment, is punishable as provided in the preceding section.

156. *Fraudulent pretenses relative to birth of infant.*

SEC. 156. Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate from any person lawfully entitled thereto, is punishable by imprisonment in the state prison not exceeding ten years.

157. *Substituting one child for another.*

SEC. 157. Every person to whom an infant has been confided for nursing, education, or any other purpose, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is punishable by imprisonment in the state prison not exceeding seven years.

158. *Common barratry.*

SEC. 158. Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the county jail not exceeding six months, and by fine not exceeding five hundred dollars.

Common barratry, in criminal law, is the offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise: Bouv. Law Dict., tit. Barratry; 4 Bla. Com. 134. An indictment for this offense must charge the offender with being a common barrator. Such a person was indictable at common law as a nuisance: *Commonwealth* v. *Mohn*, 52 Pa. St. 243; *State* v. *Chitty*, 1 Bailey, 379. A person can only be convicted of this offense by the showing a number of distinct acts of misconduct: *Commonwealth* v. *Davis*, 11 Pick. 434; *Commonwealth* v. *Pray*, 13 Id. 362; *Commonwealth* v. *Tubbs*, 1 Cush. 2. It is not necessary, however, that the particular acts of misconduct should be set forth or specified in the indictment; but the defendant is entitled to a note, before the trial, of the particular acts of barratry which the prosecution intend to prove against him. A failure to furnish such note will be sufficient to justify the court in refusing to proceed with the trial of the indictment: *Commonwealth* v. *Davis*, 11 Pick. 434; *Commonwealth* v. *Pray*, 13 Id. 362. The moving and exciting criminal prosecutions is barratry, the same as the exciting of civil suits: *State* v. *Chitty*, 1 Bailey, 397. And it may be committed by moving and exciting the commencement of a just suit, if the motive is selfish or oppressive: Id. Whether three acts of barratry constituted the perpetrator a common barrator was at first unsettled in Massachusetts, but it was subsequently determined that they did: *Commonwealth* v. *McCulloch*, 15 Mass. 226; *Commonwealth* v. *Tubbs*, 1 Cush. 2. In this state, before a person can be convicted of common barratry, it must appear that he has excited at least three suits or proceedings at law, with a corrupt or malicious intent to vex and annoy: Sec. 159; see *Voorhees* v. *Dorr*, 51 Barb. 580.

159. *What proof is required.*

SEC. 159. No person can be convicted of common barratry except upon proof that he has excited suits or proceedings at law in at least three instances, and with a corrupt and malicious intent to vex and annoy.

160. *Misconduct by attorneys.*

SEC. 160. Every attorney who, whether as attorney or as counselor, either:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Willfully delays his client's suit with a view to his own gain; or,

3. Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for;

—Is guilty of a misdemeanor.

Disbarring attorneys: See sec. 287, Code Civ. Proc., and note.

161. *Buying demands or suit by an attorney.*

SEC. 161. Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor.

Maintenance and champerty.—Blackstone defines maintenance to be "an officious intermeddling in a suit that no way belongs to one, by maintaining or assisting either party with money or otherwise to prosecute or defend it:" 4 Bla. Com. 134. The same writer defines champerty to be "a bargain with a plaintiff or defendant, *campum partire*, to divide land or other matter sued for between them if they prevail at law, whereupon the champertor is to carry on the party's suit at his own expense:" Id. 135. The distinction between the two seems to be, where there is no agreement to divide the thing in suit, the party intermeddling is guilty of maintenance only; but where he stipulates to receive part of the thing in suit, he is guilty of champerty. The doctrines of champerty and maintenance are generally recognized as a part of the ancient common law. In later days the law on the subject of these two offenses has been greatly modified both in England and America, and in many of the states is regarded as entirely obsolete: *Thallhimer* v. *Brinckerhoff*, 15 Am. Dec. 318, and cases there cited. These offenses, prior to the adoption of the codes, had no existence in this state: *Mathewson* v. *Fitch*, 22 Cal. 94; *Hoffman* v. *Vallejo*, 45 Id. 564. By this section they seem to be made a part of the law, to the extent of prohibiting an attorney from buying or being interested in buying any evidence of a debt or thing in action, with intent to bring suit thereon. Much conflict exists in the authorities on the point as to whether or not a contract of an attorney to receive compensation for his services out of the subject-matter of the suit is champertous. In *Rust* v. *Larue*, 14 Am. Dec. 172; *Thurston* v. *Percival*, 1 Pick. 415; *Lathrop* v. *Amherst Bank*, 9 Met. 489; *Backus* v. *Byron*, 4 Mich. 535; *Martin* v. *Clarke*, 8 R. I. 389; *Scobey* v. *Ross*, 13 Ind. 117; and *Quigley* v. *Thompson*, 53 Id. 317, contracts by which an attorney was to receive a part of the land or other thing in dispute as his compensation in case of success, were held champertous, and therefore void. While in *Moses* v. *Bagley*, 55 Ga. 283; *Meeks* v. *Dewberry*, 57 Id. 263; *Newkirk* v. *Cone*, 18 Ill. 449; *Thompson* v. *Reynolds*, 73 Id. 11; *Boardman* v. *Thompson*, 25 Iowa, 487; *McDonald* v. *Chicago R. R. Co.*, 29 Id. 170; and *Wright* v. *Tebbitts*, 91 U. S. 252, it was held that such contracts were not champertous unless the attorney undertakes to bear the expenses of the suit. And in those states in which the doctrine of maintenance and champerty has not been adopted, contracts entered into by an attorney to recover land or other property for an interest in it, even though he agree to pay the expenses, are not champertous: *Mathewson* v. *Fitch*, 22 Cal. 86; *Hoffman* v. *Vallejo*, 45 Id. 564; *Ballard* v. *Carr*, 48 Id. 74; *Howard* v. *Throckmorton*, Id. 482.

Contingent fees are not within the rules against champerty and maintenance: *Wilhite* v. *Roberts*, 4 Dana, 172; *Ramsey* v. *Trent*, 10 B. Mon. 336; *Stansell* v. *Lindsay*, 50 Ga. 360; *Newkirk* v. *Cone*, 18 Ill. 449; *Stanton* v. *Embrey*, 93 U. S. 548; *Porter* v. *Parmly*, 39 N. Y. Super. Ct. 219; *Ely* v. *Cook*, 2 Abb. App. Dec. 14; *Marsh* v. *Holbrook*, 3 Id. 176.

162. *Attorneys forbidden to defend prosecutions carried on by their partners or formerly by themselves.*

SEC. 162. Every attorney who directly or indirectly advises in relation to, or aids or promotes, the defense of any action or proceeding in any court, the prosecution of which is carried on, aided, or promoted by any person as district attorney or other public prosecutor, with whom such person is directly or indirectly connected as a partner; or who, having himself prosecuted or in any manner aided or promoted any action or proceeding in any court as district attorney or other public prosecutor, afterwards, directly or indirectly, advises in relation to or takes any part in the defense thereof, as attorney or otherwise; or who takes or receives any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatever

having relation to the defense thereof—is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, forfeits his license to practice law.

163. *Limitation of preceding section.*

SEC. 163. The preceding section does not prohibit an attorney from defending himself in person, as attorney or counsel, when prosecuted, either civilly or criminally.

164. *Grand juror acting after challenge has been allowed.*

SEC. 164. Every grand juror, who with knowledge that a challenge interposed against him by a defendant has been allowed, is present at or takes part or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

165. *Bribing members of common councils, boards of supervisors, or trustees.*

SEC. 165. Every person who gives or offers a bribe to any member of any common council, board of supervisors, or board of trustees of any county, city, or corporation, with intent to corruptly influence such member in his action on any matter or subject pending before the body of which he is a member, and every member of either of the bodies mentioned in this section who receives or offers to receive any such bribe, is punishable by imprisonment in the state prison for a term not less than one nor more than fourteen years, and is disqualified from holding any office in this state.

Stats. 1863, 645, secs. 1, 2.

Subd. 4. Willful disobedience of process or order: See *Ex parte Cohen*, 5 Cal. 494; *Ex parte Perkins*, 18 Id. 60; *People* v. *County Judge*, 27 Id. 151; *Ex parte Smith*, 53 Id. 204. A court has no power to punish a person for not complying with an order that is not within his power to perform: *Adams* v. *Haskell*, 6 Id. 316; *Galland* v. *Galland*, 44 Id. 475; *Williams* v. *Dwinelle*, 51 Id. 442; *Ex parte Cohn*, 55 Id. 193.

The superior courts of this state have power to issue a writ of *habeas corpus* commanding the production of the body of a prisoner held under authority of a warrant of arrest issued by the governor of this state upon the requisition of a governor of another state, that the causes of his detention may be inquired into, and the refusal of the custodian to obey the writ is a contempt of court: *In re Robb*, 64 Cal. 431. This view was sustained in *Robb* v. *Connolly*, 111 U. S. 624, disapproving *In re Robb*, 9 Saw. 568.

Subd. 6. Refusal of witness to answer: *Ex parte Rowe*, 7 Cal. 175, 181.

Subd. 7. Publication of false report of court proceedings: *Matter of Levi Parsons*, 1 Cal. 539.

166. *Criminal contempts.*

SEC. 166. Every person guilty of any contempt of court, of either of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority;

2. Behavior of the like character committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law;

3. Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court;

4. Willful disobedience of any process or order lawfully issued by any court;

5. Resistance willfully offered by any person to the lawful order or process of any court;

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question;

7. The publication of a false or grossly inaccurate report of the proceedings of any court;

8. Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of such court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon such prisoner, except as provided in this code.

Contempt punishable as a crime: Sec. 657.

Contempts.—Power of court to punish: Code Civ. Proc., secs. 128, 177, 178. The power of a court to punish for an alleged contempt of its authority is undoubted, but such power is in its nature arbitrary, and its exercise is not to be upheld except under the circumstances and in the manner prescribed by law: *Batchelder* v. *Moore*, 42 Cal. 412; *Galland* v. *Galland*, 44 Id. 475; see *People* v. *O'Neil*, 47 Id. 109.

Criminal contempt: See a series of valuable articles by S. D. Thompson on this subject in 5 Crim. Law Mag. 151, 483, 647.

Subd. 1. Impairing respect due the court.—Sending a threatening and insulting letter to the grand jury in regard to a matter pending before them is an offense against the criminal law, and directly tends to impair the respect due the court, and to obstruct the course of justice: *Matter of Tyler*, 64 Cal. 434.

167. *False certificates by public officers.*

SEC. 167. Every public officer authorized by law to make or give any certificate or other writing, who makes and delivers as true any such certificate or writing containing statements which he knows to be false, is guilty of a misdemeanor.

168. *Disclosing fact of indictment or presentment having been found or made.*

SEC. 168. Every grand juror, district attorney, clerk, judge, or other officer, who, except by issuing or in executing a warrant of arrest, willfully discloses the fact of a presentment or indicment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

"This section is founded upon sections 223 and 224 of the criminal practice act: Stats. 1851, 212, extended to embrace indictments as well as presentments, the reason of the rule applying with as much force to one as to the other:" Commissioners' note.

169. *Grand juror disclosing what transpired before the grand jury.*

SEC. 169. Every grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury, or anything which he himself or any other member of the grand jury may have said, or in what manner he or any other grand juror may have voted on a matter before them, is guilty of a misdemeanor.

170. *Maliciously procuring search-warrant.*

SEC. 170. Every person who maliciously and without probable cause procures a search-warrant or warrant of arrest to be issued and executed is guilty of a misdemeanor.

171. *Unauthorized communication with convict in the state prison.*

SEC. 171. Every person, not authorized by law, who, without the consent of the warden, or other officer in charge of the state prison, communicates with any convict therein, or brings into or conveys out of the state prison any letter or writing to or from any convict, is guilty of a misdemeanor.

172. *Selling liquor within a mile of state prison, etc.*

SEC. 172. Every person who, within two miles of the land belonging to this state upon which the state prison is situated, or within one mile of the insane asylum at Napa, or within one mile of the grounds belonging and adjacent to the university of California in Alameda county, or in the state capitol, or within the limits of the grounds adjacent and belonging thereto, sells, gives away, or

exposes for sale, any vinous or alcoholic liquors, is guilty of a misdemeanor. [*Amendment, approved April* 3, 1876; *Amendments* 1875–6, 109; *took effect from passage.*]

An Act to prohibit the sale of intoxicating liquors within two miles of the University of California.
[Approved December 23, 1873; 1873–4, 12.]

No liquor to be sold within two miles of university.

SECTION 1. It shall not be lawful for any person or persons to keep or expose for sale, or sell, or give, or permit others to take, for a consideration, directly or indirectly, any malt, spirituous, or other alcoholic liquors, upon or within two miles of the grounds belonging and adjacent to the University of California in Alameda county.

Penalty.

SEC. 2. Any violation of section first of this act shall be deemed a misdemeanor, punishable by fine, or imprisonment in the county jail of Alameda county, or both. The fine to be not less than fifty dollars nor more than one hundred dollars; and the imprisonment to be not less than thirty nor more than ninety days for each offense.

SEC. 3. This act shall take effect from and after the first day of February, eighteen hundred and seventy-four.

This act was declared constitutional and valid in *Ex parte McLain*, 61 Cal. 436.

173. *Importing foreign convicts.*

SEC. 173. Every captain, master of a vessel, or other person, who willfully imports, brings, or sends, or causes or procures to be brought or sent, into this state, any person who is a foreign convict of any crime which, if committed within this state, would be punishable therein (treason and misprision of treason excepted), or who is delivered or sent to him from any prison or place of confinement in any place without this state, is guilty of a misdemeanor.

Based upon the act of 1850 in relation to the importation of convicts: Stats. 1850, 202, secs. 1, 2.

174. *Bringing Chinese into the state.*

SEC. 174. Every person bringing to or landing within this state any person born either in the empire of China or Japan, or the islands adjacent to the empire of China, without first presenting to the commissioner of immigration evidence satisfactory to such commissioner that such person desires voluntarily to come into this state and is a person of good character, and obtaining from such commissioner a permit describing such person and authorizing the landing, is punishable by a fine of not less than one nor more than five thousand dollars, or by imprisonment in the county jail not less than two nor more than twelve months.

"This section embodies the material penal provisions of the act to prevent the kidnaping and importation of Mongolian females for criminal purposes, and the kindred act of March 18, 1870; Stats. 1870, 330 et seq. The provisions of this section are broad enough to include every offense defined in either act:" Commissioners' note.

175. *Separate and distinct prosecutions.*

SEC. 175. Every individual person of the classes referred to in the two preceding sections, brought to or landed within this state contrary to the provisions of such sections, renders the person bringing or landing liable to a separate prosecution and penalty.

176. *Omission of duty by public officer.*

SEC. 176. Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

177. *Penalty when not prescribed.*

SEC. 177. When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or

omission is punishable as a misdemeanor. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 426; *took effect July* 1, 1874.]

178. *Officers and employees of corporations not to employ Chinese.*

SEC. 178. Any officer, director, manager, member, stockholder, clerk, agent, servant, attorney, employee, assignee, or contractor of any corporation now existing, or hereafter formed under the laws of this state, who shall employ, in any manner or capacity, upon any work or business of such corporation, any Chinese or Mongolian, is guilty of a misdemeanor, and is punishable by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail of not less than fifty nor more than five hundred days, or by both such fine and imprisonment; provided, that no director of a corporation shall be deemed guilty under this section who refuses to assent to such employment, and has such dissent recorded in the minutes of the board of directors.

1. Every person who, having been convicted for violating the provisions of this section, commits any subsequent violation thereof after such conviction is punishable as follows:

2. For each subsequent conviction such person shall be fined not less than five hundred nor more than five thousand dollars, or by imprisonment not less than two hundred and fifty days nor more than two years, or by both such fine and imprisonment. [*New section, approved February* 13, 1880; *Amendments* 1880, 1 (*Ban. ed.* 6); *took effect immediately.*]

In conflict with the Chinese treaty: See note to next section.

179. *Corporations not to employ Chinese—Penalty.*

SEC. 179. Any corporation now existing, or hereafter formed under the laws of this state, that shall employ, directly or indirectly, in any capacity, any Chinese or Mongolian, shall be guilty of a misdemeanor, and upon conviction thereof shall for the first offense be fined not less than five hundred nor more than five thousand dollars, and upon the second conviction shall, in addition to said penalty, forfeit its charter and franchise, and all its corporate rights and privileges, and it shall be the duty of the attorney-general to take the necessary steps to enforce such forfeiture. [*Amendment, approved February* 13, 1880; *Amendments* 1880, 2 (*Ban. ed.* 6); *took effect immediately.*]

In conflict with Chinese treaty.—The last two sections were enacted by the legislature for the purpose of giving effect to section 2 of article 19 of the constitution of California. This section of the constitution, and the two sections mentioned, were held, *In re Tiburcio Parrot*, 5 Pac. C. L. J., supplement, by the circuit court of the United States, to be in conflict with the treaty of the United States with China, 16 Stat. 7401, and therefore void.

An Act relating to the intoxication of officers.

[Appoved April 15, 1880; 1880, 77 (Ban. ed. 265).]

Intoxication of officers—Misdemeanor.

SECTION 1. Any officer of a town, village, city, county, or state, who shall be intoxicated while in discharge of the duties of his office, or by reason of intoxication is disqualified for the discharge of or neglects his duties, shall be guilty of a misdemeanor, and on conviction of such misdemeanor, shall forfeit his office; and in such case the vacancy occasioned thereby shall be filled in the same manner as if such officer had filed his resignation in the proper office, and it had been accepted by the proper authority; *provided*, such acceptance shall have been necessary to make the office vacant.

SEC. 2. This act shall take effect immediately.

CHAPTER VIII.

CONSPIRACY.

182. *Criminal conspiracy defined, and punishment fixed.*

SEC. 182. If two or more persons conspire:

1. To commit any crime;

2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime;

3. Falsely to move or maintain any suit, action, or proceeding;

4. To cheat and defraud any person of any property by any means which are in themselves criminal, or to obtain money or property by false pretenses; or,

5. To commit any act injurious to the public health, to public morals, or for the perversion or obstruction of justice, or due administration of the laws;

—They are punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or both. [*Amendment, approved March* 30, 1874; *Amendments*, 1873–4, 426; *took effect July* 1, 1874.]

Indictable conspiracy has been defined to be a confederation by two or more persons to commit an indictable offense; or by deceit or falsehood or other fraudulent means to defraud the public generally, or a particular individual, though in a way which might not expose a single person to indictment if the fraud was undertaken by him alone: 2 Whart. Crim. L., 8th ed., sec. 1337. Any definition of what constitutes conspiracy is necessarily somewhat uncertain and general. At common law, the list of acts which were considered conspiracies is quite extensive. Thus, a confederation to commit a felony, or a misdemeanor, or to cheat, or defraud, to personate another, to marry under a feigned name, to injure a man in his trade or profession, to charge a man as the reputed father of a bastard, to manufacture spurious goods with intent to sell them as genuine, to file a fraudulent bond, to extort a deed by means of a peace warrant, to sell fraudulent railroad tickets, to act in fraud of bankrupt or insolvency laws, to violate lottery laws, to commit assault or any breach of the peace, to falsely imprison, to excite sedition, etc., have each been held to constitute an indictable conspiracy. But a conspiracy to commit a mere civil trespass, as to kill game, is not indictable. For a full discussion of the law on this subject, see 2 Whart. Crim. L., 8th ed., secs. 1337, 1406. See sec. 1104. See also a valuable note to *People* v. *Richards*, 51 Am. Dec. 92–94.

Indictment for conspiracy: Sec. 1104, note 2.

Evidence of conspiracy: Sec. 1104, note 3.

Civil action will not lie for a conspiracy unless accompanied by some wrongful act damaging the plaintiff: See *Taylor* v. *Bidwell*, 3 West Coast Rep. 479.

183. *No other conspiracies punishable criminally.*

SEC. 183. No conspiracies, other than those enumerated in the preceding section, are punishable criminally.

184. *Overt act, when necessary.*

SEC. 184. No agreement, except to commit a felony upon the person of another, or to commit arson, or burglary, amounts to a conspiracy, unless some act, beside such agreement, be done to effect the object thereof, by one or more of the parties to such agreement.

"The rule of the section is a restriction of the rule of common law. By that rule the gist of conspiracy is the unlawful confederating; and the act is complete when the confederacy is made. Any act done in pursuance of it is no constituent part of the offense, but merely an aggravation of it: See *Commonwealth* v. *Judd*, 2 Mass. 329; *State* v. *Rikey*, 10 N. J. L. 293; *State* v. *Buchanan*, 5 Har. & J. 317, 352. So, also, it is said that where an indictment charges an ordinary conspiracy it is not necessary to prove a common design between the defendants before proving the acts of each defendant; for the acts of each defendant are only evidence against himself, and may be the only means of establishing the conspiracy. In high treason the overt act of one is the overt act of all; and therefore a common design must, in such cases, precede the proof of individual acts: *Regina* v. *Brittain*, 11 L. T. 48; 3 Cox C. C. 77. As to whether the misdemeanor of conspiracy to commit a felony is to be deemed merged in the felony when subsequently committed, see *Commonwealth* v. *Fisher*, 5 Mass. 106; *Lambert* v. *People*, 9 Cow. 620; *Rex* v. *Button*, 3 Cox C. C. 229; and 18 L. J. M. C. 19:" Commissioners' note.

185. *Wearing mask or disguise, when unlawful.*

SEC. 185. It shall be unlawful for any person to wear any mask, false whiskers, or any personal disguise (whether complete or partial) for the purpose of:

1. Evading or escaping discovery, recognition, or identification in the commission of any public offense;

2. Concealment, flight, or escape, when charged with, arrested for, or convicted of any public offense. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor. [*New section, approved March* 30, 1874; *Amendments* 1873-4, 426; *took effect July* 1, 1874.]

TITLE VIII.

OF CRIMES AGAINST THE PERSON.

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CHAPTER I.

HOMICIDE.

187. *Murder defined.*

SEC. 187. Murder is the unlawful killing of a human being, with malice aforethought.

Degrees of murder: Sec. 189. The above definition includes both degrees of murder, and under an information charging the offense in the language of the section, the prisoner may be convicted of murder in the first degree: *People* v. *De la Cour Soto*, 63 Cal. 165.

Murder is the killing of any person under the king's peace, with malice prepense or aforethought, either express or implied by law: 1 Russell on Crimes, 421. Or as defined by Sir Edward Coke, the offense is committed "when a person of sound mind and discretion unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought, either express or implied:" 3 Inst. 47. This definition is accepted by Blackstone: 4 Bla. Com. 196. This definition has, however, been severely criticised: Livingston's Pen. Law, 186. Another definition is, that the crime consists in "the willful killing of any subject whatsoever, through malice aforethought:" 1 Hawk. P. C., sec. 3. But "a better definition," says a learned writer on criminal law, "is the following: murder is any act committed from what the law deems a depraved mind, fully bent on evil, the result of which act is the death of a human being within a year and a day from the time of its commission:" 2 Bish. Crim. L., sec. 652.

The term "murder" has not two meanings, nor can it be construed in two different ways. It means simply, as it has always meant in this state, the unlawful killing of a human being with malice aforethought, either express or implied: *People* v. *Haun*, 44 Cal. 96. It is murder to kill a person, though he be already mortally wounded by another: *People* v. *Ah Fat*, 48 Id. 61. If the wound be inflicted with felonious intent and death ensue from the effects of the wound at any time within a year and a day, it is murder: *People* v. *Steventon*, 9 Id. 273; see sec. 194. Deliberation and intention are vital elements of murder, and if the court's instructions ignore them it will be erroneous: *People* v. *Miles*, 55 Id. 207; and see note to sec. 189, *post*. So where defendant used drugs to commit an abortion, as the result of which the woman died, there being no evidence of an intent to kill the accused may be admitted to bail: *Ex parte Wolff*, 57 Id. 94.

Human being.—A child in its mother's womb is not a "human being" within the

meaning of that term as used to define murder. The rule is that the child must be born, and that every part of it must have come from the mother before the killing, otherwise it will not be murder: *Rex* v. *Brain*, 6 Car. & P. 349; *Rex* v. *Crutchley*, 7 Id. 814; *Rex* v. *Poulton*, 5 Id. 329.

Murder and manslaughter.—Whether a homicide amounts to murder, or to manslaughter merely, does not depend upon the presence or absence of the intent to kill. In either case there may be a present intention to kill at the moment of the commission of the act: *People* v. *Freel*, 48 Cal. 436; see sec. 192, note 1.

Malice: See note to next section. In its legal sense, malice does not mean mere hatred and ill-will, but denotes an intent to do an unlawful act, without legal justification or excuse. But evidence of previous hatred and ill-will is always admissible as tending to prove active or legal malice at the time of the homicide: *People* v. *Taylor*, 36 Cal. 255. It means a wrongful act, done intentionally, without just cause or excuse: *Maynard* v. *F. F. Ins. Co.*, 34 Id. 48; see sec. 7, subd. 4. The rule is well settled that where an unlawful killing is proved malice will be presumed, and the burden of proof will be thrown on the defendant to show the absence or want of malice: *Regina* v. *Maloney*, 9 Cox C. C. 6; *Commonwealth* v. *Webster*, 5 Cush. 295; see sec. 1105, note.

188. *Malice defined.*

SEC. 188. Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow-creature. It is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

Orgin of section.—The code commissioners say that this section is based upon section 20 of the act of 1850, 231, and part of section 21 of the same act as amended in 1856, 219.

Section 20 is as follows: "Express malice is that deliberate intention unlawfully to take away the life of a fellow-creature which is manifested by external circumstances, capable of proof." This section did not pretend to define implied malice, but in section 21, which was devoted chiefly to a division of murder into degrees, it is declared that "malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart." The commissioners then state: "It is very clear that neither definition is complete when the term 'malice' is used in a general sense, as it is used in the sections cited. The commission have placed the definition of malice express and malice implied in the same section, and limited the definition to that malice which is an ingredient of murder; they omit from the definition of express malice the phrase 'by external circumstances capable of proof,' for that phrase performs no office in the section, and constitutes at best a very indifferent definition of the word 'manifested,' which precedes it. 'Malice in a legal sense means a wrongful act done intentionally without just cause or excuse:' *Maynard* v. *F. F. Ins. Co.*, 34 Cal. 48; see sec. 7, subd. 4, for a general definition of malice."

Malice aforethought: Sec. 187, note. The killing must be committed with malice aforethought to constitute the crime of murder. This is the grand criterion which distinguishes murder from other killing; and this malice prepense is not so properly spite or malevolence to the deceased in particular as any evil design in general—the dictate of a wicked, depraved, and malignant heart—and it may be either express or implied in law. Malice aforethought is a necessary ingredient in the crime of murder, and should therefore be alleged in the indictment: *People* v. *Schimdt*, 63 Cal. 28, citing *People* v. *Urias*, 12 Id. 325; *People* v. *King*, 27 Id. 507; *People* v. *Bonilla*, 38 Id. 699.

Express and implied malice.—Express malice is when one, with a sedate, deliberate mind and formed designed, doth kill another; which formed design is evidenced by external circumstances discovering that inward intention; as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm: 4 Bla. Com. 198. No better definition of implied malice can be found than that given in the section: *People* v. *Williams*, 43 Cal. 349. A very able authority denies that there is any distinction between "malice express" and "malice implied." Our only way of proving malice is by inferring it from circumstances. Even should a party when examined on the stand say, "I did the act maliciously," the question would still remain, how far the statement is to be believed. The mode of proof is not demonstration, but inference: 1 Whart. Crim. L., 8th ed., sec. 113; Whart Crim. Ev., secs. 7, 735, 739. See *People* v. *Rater*, 63 Cal. 421, for proper submission of the question of malice to the jury.

189. *Degrees of murder.*

SEC. 189. All murder which is perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration, or attempt to perpetrate arson, rape, robbery, burglary, or mayhem, is murder of the first degree; and all other kinds of murders are of the second degree. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 427; *took effect July* 1, 1874.]

Statutory division of murder into degrees.—The common law recognizes no distinction between different kinds of murder. In most of the United States, however, the offense has by statute been divided into degrees, only one of which, if either, is punished capitally: Whart. on Homicide, secs. 170, 171. Where the distinction is thus made, the statute usually divides the crime into two degrees; in Florida, Minnesota, and Wisconsin, however, murder is divided into three degrees. In Colorado, Dakota, Georgia, Illinois, Kentucky, Louisiana, Mississippi, North Carolina, Rhode Island, and South Carolina there is no division of murder into degrees, but in some of these states the same object is accomplished by giving the jury power to fix the penalty at death or imprisonment, in their discretion.

The object intended to be accomplished by the statute is plain. The supreme court of California has said: "In dividing murder into two degrees, the legislature intended to assign to the first, as deserving of greater punishment, all murders of a cruel and aggravated character; and to the second, all other kinds of murder which are murder at common law, and to establish a test by which the degree of every case of murder may be readily ascertained. That test may be thus stated: Is the killing willful (that is to say, intentional), deliberate, and premeditated? If it is, the case falls within the first, and if not, within the second degree. There are certain kinds of murder which carry with them conclusive evidence of premeditation. These the legislature has enumerated in the statute, and has taken upon itself the responsibility of saying that they shall be deemed and held to be murder of the first degree. These cases are of two classes: First, where the killing is perpetrated by means of poison, etc. Here the means used is held to be conclusive evidence of premeditation. The second is, where the killing is done in the perpetration, or the attempt to perpetrate, some one of the felonies enumerated in the statute. Here the occasion is made conclusive evidence of premeditation. Where the case comes within either of these classes, the test question, 'Is the killing willful, deliberate, and premeditated?' is answered by the statute itself, and the jury have no option but to find the prisoner guilty in the first degree. Hence, so far as these two classes are concerned, all difficulty as to the question of degree is removed by the statute. But there is another and much larger class of cases included in the definition of murder in the first degree, which are of equal cruelty and aggravation with those enumerated, and which, owing to the different and countless forms which murder assumes, it is impossible to describe in the statute. In this class the legislature leaves the jury to determine, from all the evidence before them, the degree of crime, but prescribes, for the government of their deliberations, the same test which has been used by itself in determining the degree of the other two classes, to wit, the deliberate and preconceived intent to kill. Thus the three classes of cases which constitute murder of the first degree are made to stand upon the same principle. It is only in the latter class of cases that any difficulty is experienced in drawing the distinction between murder of the first and murder of the second degree, and this difficulty is more apparent than real. The unlawful killing must be accompanied with a deliberate and clear intent to take life in order to constitute murder of the first degree. The intent to kill must be the result of deliberate premeditation; it must be formed upon a pre-existing reflection, and not upon a sudden heat of passion sufficient to preclude the idea of deliberation. There need be no appreciable space of time between the intention to kill and the act of killing; they may be as instantaneous as successive thoughts of the mind. It is only necessary that the act of killing be preceded by a concurrence of will, deliberation, and premeditation on the part of the slayer; and if such is the case, the killing is murder of the first degree, no matter how rapidly these acts of the mind may succeed each other, or how quickly they may be followed by the act of killing:" *People* v. *Sanchez*, 24 Cal. 17. The distinction between murder in the first and murder in the second degree is also pointed out in *People* v. *Bealoba*, 17 Id. 389; *People* v. *Foren*, 25 Id. 361; *People* v. *Barry*, 31 Id. 357; *People* v. *Nichol*, 34 Id. 211; *People* v. *Long*, 39 Id. 694; *People* v. *Doyell*, 48 Id. 85; *People* v. *Welch*, 49 Id. 174; *People* v. *Cotta*, Id. 166; *People* v. *Hunt*, 59 Id. 430, 435; *People* v. *Hong Ah Duck*, 61 Id. 387. The following instruction is erroneous: "If you find from the evidence, beyond a reasonable doubt, that the defendant did, on the twenty-eighth of February, 1880, with malice aforethought, unlawfully kill Vivian Torres, then you will find the defendant guilty of murder in the first degree." The court said: "If the instruction is correct, murder of the second degree is the unlawful killing of a human being without malice:" *People* v. *Grigsby*, 62 Id. 482. So also in *People* v. *Guance*, 57 Id. 154. For a sufficient instruction as to the degrees of murder, see *People* v. *Raten*, 63 Id. 424.

Belief by the accused that the deceased had seduced the former's wife cannot reduce murder from the first to the second degree: *People* v. *Hurtado*, 63 Cal. 288. See *People* v. *Mortier*, 58 Id. 262, where the evidence was of murder in the first degree.

Court cannot find degree. It is not the province of the court to instruct the jury as to the degree of murder established by the evidence, and it should be left to the jury to determine that question: *People* v. *Hunt*, 59 Cal. 430; *People* v. *Woody*, 45 Id. 289; *People* v. *Gibson*, 17 Id. 283.

Killing by poison is murder in the first degree, and if the jury bring in a verdict of manslaughter, it will be set aside: *People* v. *Dailey*, 59 Cal. 600.

Deliberation and premeditation.—In the authorities above noted it is held that an intent to kill is not alone sufficient to make an unlawful homicide murder in the first degree. There must also be deliberation and premeditation. The words "willful, deliberate, and premeditated," clearly mean more than intentional. But there need be no appreciable space of time between the formation of the intention to kill and the act of killing; they may be as instantaneous as successive thoughts of the mind. If the act of killing be preceded by a concurrence of will, deliberation, and premeditation on the part of the slayer, it is murder in the first degree, no matter how rapidly these acts of the mind may succeed each other, or how quickly they may be followed by the act of killing: *People* v. *Nichol*, 34 Cal. 211; *People*

v. *Long*, 39 Id. 694; *People* v. *Williams*, 43 Id. 344; *People* v. *Cotta*, 49 Id. 166; *State* v. *Ah Mook*, 12 Nev. 369; *McAdams* v. *State*, 25 Ark. 405. If the court's instruction ignore the question of deliberation and intention, it will be erroneous, and the use of the word "conceal" is not the same as "lying in wait:" *People* v. *Miles*, 55 Cal. 207. Where on an attempt to commit an abortion the woman dies, the accused may be admitted to bail, there being no evidence of an intent to kill: *Ex parte Wolff*, 57 Id. 94. The statute, in specifying certain kinds of homicide as constituting murder in the first degree, as where it is perpetrated by poison, lying in wait, etc., and then adds "or any other willful, deliberate, and premeditated killing," does not import that the instances enumerated shall furnish the standard of deliberation and premeditation, and that no murder is of the first degree unless perpetrated with equal forethought and calculation: *Burgess* v. *Commonwealth*, 2 Va. Cas. 483; *Commonwealth* v. *Jones*, 1 Leigh, 610; *Whiteford* v. *Commonwealth*, 6 Rand. 721; S. C., 18 Am. Dec. 771. Deliberation and premeditation are not presumed from the mere fact of unlawful homicide, but they may be inferred from the circumstances surrounding the killing. The question of the premeditation and deliberation of the defendant is one which it is peculiarly the province of the jury to determine: *People* v. *Valencia*, 43 Cal. 552. Evidence of threats, of preparation of weapons, search for the victim, nature of the instrument used, the manner of using it, etc., is competent to prove the premeditation: See *Respublica* v. *Bob*, 4 Dall. 145; *Commonwealth* v. *Williams*, 2 Ashm. 69; *Bivens* v. *State*, 11 Ark. 455; *Fields* v. *State*, 52 Ala. 348.

Insanity of defendant: See sec. 26, and note. Insanity occasioned by wife's confession of adultery: *People* v. *Hurtado*, 63 Cal. 288.

The indictment should not state the degree of murder with which the defendant is charged. It is not the province of the grand jury to determine the degree; that duty is by statute expressly cast upon the trial jury. But if the indictment does state the degree, it does not vitiate it—the statement of the degree will be treated as surplusage: *People* v. *King*, 27 Cal. 507; *People* v. *Nichol*, 34 Id. 211. The trial jury in their verdict should expressly state the degree of murder of which they find the defendant guilty: *People* v. *Campbell*, 40 Id. 129; see sec. 959.

The indictment should allege the malice aforethought: *People* v. *Schmidt*, 63 Cal. 28, citing *People* v. *Urias*, 12 Id. 325; *People* v. *King*, 27 Id. 507; and *People* v. *Bonilla*, 38 Id. 699.

Drunkenness.—Where the homicide is not committed by means of poison, lying in wait, or torture, or in the perpetration, or attempt to perpetrate, arson, rape, robbery, burglary, or mayhem, the degree of the offense depends entirely upon the question whether the killing was willful, deliberate, and premeditated; and upon that question it is proper for the jury to consider evidence of intoxication, not upon the ground that drunkenness renders a criminal act less criminal, or can be received in extenuation or excuse, but upon the ground that the condition of the defendant's mind at the time the act was committed may be inquired after, in order to justly determine the question whether at the time his mind was capable of that deliberation and premeditation which, according as they are present or absent, determine the degree of the crime. As between murder in the second degree and manslaughter, however, the drunkenness of the defendant can form no legitimate matter of inquiry: *People* v. *Nichol*, 34 Cal. 211; *People* v. *Williams*, 43 Id. 344; see sec. 22, note.

Charge in respect to drunkenness sustained: See *People* v. *De la Cour Soto*, 63 Cal. 165.

The corpus delicti in all cases of homicide must be proved as an essential condition to conviction. In other words, it is necessary to establish: 1. That the deceased died from the effect of a wound; 2. That this wound was unlawfully inflicted. "I would never," says Lord Hale, "convict any person of murder or manslaughter unless the fact were proved to be done, or at least the body found dead:" 2 Hale P. C. 290. The death should be distinctly proved, either by direct evidence of the fact, as by inspection of the body, or by circumstantial evidence strong enough to leave no ground for reasonable doubt. "The sudden disappearance of a man of known and established habits, without apparent cause, and the failure to find him, or any trace of him, after diligent search, although they may lead to a strong suspicion that he has come to an untimely end, yet are not alone sufficient proof of his death, because the fact may be accounted for on the hypothesis (however improbable) that he may have absconded and eluded all inquiry, or be kidnaped and concealed, and be still alive. But if his dead body be found, it is a fact in its nature conclusive. It has sometimes been said by judges that a jury ought never to convict in a case of homicide unless the dead body be found and identified. This, as a general proposition, is undoubtedly true and correct; and disastrous and lamentable consequences have resulted from disregarding the rule. But, like other rules, it is to be taken with some qualification. It may sometimes happen that the dead body cannot be produced, although the proof of the death is clear and satisfactory. As in a case of murder at sea, where the body is thrown overboard in a dark and stormy night, at a great distance from land or any vessel; although the body cannot be found, nobody can doubt that the author of that crime is chargeable with murder. But if the body can be found and identified, it goes conclusively to one of the facts necessary to be proved—the death of the person alleged to have been killed:" *Per* Shaw, C. J., Burns' Webster Case, 479; see Whart. on Homicide, secs. 628–641. In a late case, where the evidence tended to show that the defendants went to the house of the deceased for the purpose of killing him, and appropriating his sheep to their own use; that in pursuance of that object one of them shot him at least twice, once in the head and once in the back, either of the shots being likely to produce death; that the person thus shot was never again seen or heard of; that that night—a dark one—defendants built a large fire, and that subsequently remnants of a few bones were found in the ashes; that one of the defendants stated that they had burned the body; that the sheep were taken possession of by the defendants, the wool sold, and the proceeds applied to their own use—it was held that this was evidence sufficient to establish the *corpus delicti*, viz.,

the fact of death, and that it occurred by criminal agency: *People* v. *Alviso*, 55 Cal. 230; see also *People* v. *Dick*, 37 Cal. 277.

Burden of proving justification or excuse: See sec. 1105, *post*.

190. *Punishment for murder.*

SEC. 190. Every person guilty of murder in the first degree shall suffer death or confinement in the state prison for life, at the discretion of the jury trying the same; or upon a plea of guilty, the court shall determine the same; and every person guilty of murder in the second degree is punishable by imprisonment in the state prison not less than ten years. [*Amendment, approved March* 28, 1874; *Amendments* 1873-4, 457; *took effect from passage.*]

Showing that defendant is already a life convict.—In *People* v. *Hong Ah Duck*, 61 Cal. 387, after much deliberation, it was ruled that the prosecution may show that the defendant in a trial for murder is already a life convict, not for the purpose of affecting the question of guilt, but that the jury might know that if they brought in a verdict of guilty, and affixed as a punishment imprisonment for life, it would be no punishment at all.

Death penalty, how executed.—Whenever, in a proper case, the judgment of the court directs the death of the defendant, the punishment in this state is inflicted "by hanging the defendant by the neck until he is dead:" See secs. 1228, 1229.

If the judgment directs that defendant be taken to the "place of public execution," it is surplusage to that extent. Sections 1228 and 1229 provide for the execution. "The place of execution" is prescribed by the law—adjudging that it be public does not vitiate: *People* v. *Brown*, 59 Cal. 345, 357.

Discretion of the jury.—If the jury agree that the defendant is guilty of murder in the first degree, but cannot agree that the punishment shall be imprisonment for life, or if they do not declare that the punishment shall be such imprisonment, it is the duty of the court to pronounce judgment of death. The jury need not declare that death shall be inflicted; if the verdict is silent in respect to the penalty, the court must pronounce the death sentence: *People* v. *Welch*, 49 Cal. 174.

Instruction as to exercise of discretion.—It is not error "to instruct the jury that if they found the defendant guilty of murder in the first degree with some extenuating fact or circumstance in the case, it was within their discretion to pronounce such a sentence as would relieve the defendant from the extreme penalty of the law. Section 190 of the Penal Code invests a jury in a criminal case for murder with that discretion; but the discretion is not an arbitrary one, and it was proper for the court to instruct them as to its exercise:" *People* v. *Jones*, 63 Cal. 168, 170; see also *People* v. *Murback*, 64 Id. 369.

191. *Petit treason abolished.*

SEC. 191. The rules of the common law distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason are abolished, and these offenses are homicides, punishable in the manner prescribed by this chapter.

"Petit treason, according to the statute of 25 Edw. III., c. 2, might happen three ways: by a servant killing his master, a wife her husband, or an ecclesiastical person (either secular or regular) his superior, to whom he owed faith and obedience. Petit treason was but an aggravated degree of murder. The distinction between it and murder was abolished in England by statute of 9 Geo. IV., c. 31, sec. 2. The punishment of petit treason in a man was to be drawn and quartered; in a woman to be drawn and burned: 4 Bla. Com. 204:" Commissioners' note.

192. *Manslaughter defined—Voluntary and involuntary manslaughter.*

SEC. 192. Manslaughter is the unlawful killing of a human being, without malice. It is of two kinds:

1. Voluntary—upon a sudden quarrel or heat of passion;

2. Involuntary—in the commission of an unlawful act not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

"**This section embodies the material portions** of sections 22, 23, 24, and 25 of the crimes and punishment act of 1850, Stats. 1850, 229:" From commissioners' note.

Murder and manslaughter, distinction between.—The presence or absence of malice is the distinguishing feature between murder and manslaughter: *People* v. *Crowey*, 56 Cal. 56. If malice enter into the unlawful act by which the death is caused, it is murder; but if malice be wanting, it is but manslaughter: 1 Whart. Crim. L., 8th ed., sec. 304; 1 Russell on Crimes, 667, 783. For definition and illustrations of what constitutes legal malice, see notes to sections 187 and 188. Manslaughter is a homicide not excusable, not justifiable, but yet not intentional; a homicide which results from wrong conduct but not from the cool intent to

kill; from misbehavior; from misconduct which results differently from what the party had reason to expect from the act which was done. Murder is a homicide which has been caused intentionally—intentionally, either from the express purpose to commit the murder, or from a wrongful act of violence, with such means and in such a manner as might reasonably be supposed would cause death. There must be in murder what is called "malice;" namely, either a purpose to kill, or else a purpose to do an act of violence which might reasonably be supposed would cause death, and which does cause death: *Commonwealth* v. *Sturtevant*, 117 Mass. 122; S. C., Whart. on Homicide, 742.

The law, in consideration of human weakness, makes the offense manslaughter when it is committed under the influence of passion caused by an insult or provocation sufficient to excite an irresistible passion in a reasonable person; one of ordinary self-control. "If defendant was so far in possession of his mental faculties as to be capable of knowing that the act of killing was wrong, any partial defect of understanding which might cause him more readily to give way to passion than a man ordinarily reasonable cannot be considered for any purpose. To reduce the offense to manslaughter, the provocation must at least be such as would stir the resentment of a reasonable man:" *People* v. *Hurtado*, 63 Cal. 288.

Whether a killing is murder or manslaughter does not depend upon the fact whether or not a dangerous weapon was used; and an instruction which makes the character of the crime depend, not upon the intention with which an act was done, but upon the nature of the instrument used, is error: *People* v. *Crowey*, 56 Cal. 36.

Voluntary manslaughter.—"If, upon a sudden quarrel, two persons fight, and one of them kills the other, this is manslaughter; and so it is if they, upon such an occasion, go out and fight in a field, for this is one continued act of passion, and the law pays that regard to human frailty as not to put a hasty and a deliberate act upon the same footing with regard to guilt. So also if a man be greatly provoked, as by pulling his nose or other great indignity, and immediately kills his aggressor, though this action is not excusable *se defendendo*, since there is no absolute necessity for doing it to preserve himself, yet neither is it murder, for there is no previous malice, but it is manslaughter. . . . . So if a man takes another in the act of adultery with his wife, and kills him directly upon the spot, ... it is manslaughter:" 4 Bla. Com. 191. Voluntary manslaughter differs from homicide in self-defense in this, that in the one case there is an apparent necessity for self-preservation to kill the aggressor, while in the other there is no such necessity at all, it being only a sudden act of revenge: Id. In cases of mutual combat, to reduce the offense to manslaughter it must appear that the contest was waged on equal terms, and no undue advantage sought or taken by the defendant; for if such was the case, malice may be inferred, and the killing will be murder: *People* v. *Sanchez*, 24 Cal. 17. See *People* v. *Barry*, 31 Id. 357, and *People* v. *Crowey*, 56 Id. 36.

No words of reproach, however grievous, are sufficient provocation to reduce the offense of intentional homicide from murder to manslaughter: *People* v. *Murback*, 64 Cal. 369; *People* v. *Tampkin*, 62 Id. 472; *People* v. *Turley*, 50 Id. 469; *People* v. *Butler*, 8 Id. 435; *Commonwealth* v. *Webster*, 5 Cush. 295; East P. C., sec. 20.

Involuntary manslaughter is where death results unintentionally, so far as the defendant is concerned, from an unlawful act on his part not amounting to felony, or from a lawful act negligently performed. Hence it is manslaughter where the death of another occurs through the defendant's negligent use of dangerous agencies; so also where death incidentally but unintentionally results in the execution of a trespass: Whart. on Homicide, sec. 6. Almost all the cases of involuntary manslaughter will be found to fall under one of two classes: 1. Where the killing takes place in the prosecution of some criminal, unlawful, or wanton act, not a felony; 2. Where the killing takes place in consequence of some lawful act being criminally or improperly performed, or of some act performed without lawful authority.

193. *Punishment of manslaughter.*

SEC. 193. Manslaughter is punishable by imprisonment in the state prison not exceeding ten years.

194. *Deceased must die within a year and a day.*

SEC. 194. To make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered; in the computation of which the whole of the day on which the act was done shall be reckoned the first.

"This section affirms the common-law rule: 2 Bish. Crim. Law., sec. 655; *State* v. *Orrell*, 1 Dev. L. 139. 'Fractions of a day are not regarded, consequently it makes no difference in the computation whether the stroke or death is in the morning or afternoon:' Id:" Commissioners' note.

195. *Excusable homicide.*

SEC. 195. Homicide is excusable in the following cases:

1. When committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent;

2. When committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner.

Excusable homicide.—The classification given by the above and the two next succeeding sections is to some extent different from that given by most writers on criminal law. Thus Wharton divides excusable homicide into two kinds: 1. Where a man doing a lawful act, without any intention of hurt, by accident kills another; as, for instance, where a man is hunting in a park, and unintentionally kills a person concealed; 2. Self-defense, which exists where one is suddenly assaulted, and in defense of his person, where immediate and great bodily harm would be the apparent consequence of waiting for the assistance of the law, and there is no probable means of escape, kills the assailant: Whart. on Homicide, sec. 8; Whart. Crim. L., 8th ed., sec. 306; see also 4 Bla. Com. 182; 1 Russell on Crimes, 883.

Burden of proving homicide excusable: Sec. 1105, *post.*

196. *Justifiable homicide by public officers.*

SEC. 196. Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either—

1. In obedience to any judgment of a competent court; or,

2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,

3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

Subd. 1. Obedience to judgment of a competent court.—*Execution of judgment.*—A homicide committed by a sheriff in execution of a death-warrant is, of course, justifiable: 1 Russell on Crimes, 893. The judgment and sentence must be strictly followed, however, since if death is inflicted otherwise than as directed, the officer will be guilty of felony: 1 Whart. Crim. L., 8th ed., sec. 401. It is said that if an officer beheads one who is adjudged to be hanged, or *vice versa*, it is murder: 4 Bla. Com. 179. And if one not authorized execute the judgment, it is said to be murder: Id.; 2 Bish. Crim. L., secs. 540, 584. The judgment thus executed by an officer must, of course, be that of a competent court, having jurisdiction of the offense and of the defendant; otherwise the action of the officer would not be justifiable.

Subd. 2. Resisting execution of legal process.—In all cases, whether civil or criminal, where persons having authority to arrest or imprison, and using the proper means for that purpose, are resisted in so doing, they may repel force with force, and need not give back; and if the party making resistance is unavoidably killed in the struggle, this homicide is justifiable: 1 Russell on Crimes, secs. 665, 667; *Clements* v. *State*, 50 Ala. 117; Whart. on Homicide, sec. 211. But if the officer should kill where no resistance is offered, or after the resistance is over and the necessity has ceased, the killing is not justifiable: 1 Whart. Crim. L., 8th ed., secs. 402, 404; *Clements* v. *State*, 50 Ala. 117. And the necessity must be reasonable; it is not every slight resistance to his authority that will justify an officer in committing a homicide: 1 East P. C. 297; Whart. on Homicide, sec. 211; 4 Bla. Com. 180. Where a felony has been committed and the guilty party flees from justice, the officer may kill him in pursuit if he cannot otherwise overtake him: 1 Whart. Crim. L., 8th ed., sec. 405. But this is not so as regards a person fleeing from a civil arrest, nor if charged with misdemeanor merely: Whart. on Homicide, secs. 212, 213. The same rule applies to the prevention of escapes: 1 Whart. Crim. L., sec. 406. If officers of the law, when engaged in the preservation of the peace, find it necessary to take life, such killing is justifiable: Id., 8th ed., sec. 407; 4 Bla. Com. 179. Indeed, private citizens, who in the preservation of the peace necessarily take life, are held justified: *Respublica* v. *Montgomery*, 1 Yeates, 419; 2 Whart. Crim. L., 8th ed., sec. 1555. In all cases an officer should proceed with due caution; it is not every slight interruption that will justify him in resorting to extreme measures: Whart. on Homicide, sec. 216. An officer who makes an arrest out of his proper district, or without any warrant or authority, and purposely kills the party for not submitting to such illegal arrest, will, generally speaking, be guilty to the same extent as would a private citizen acting in like manner: 1 East P. C. 312.

Subd. 3. Retaking escaped prisoners.—As to escapes, see sec. 105, and note.

Burden of proving homicide justifiable: Sec. 1105, *post.*

197. *Justifiable homicide by other persons.*

SEC. 197. Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,

2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,

3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Burden of proving homicide justifiable: Sec. 1105, *post.*

Accused commencing difficulty.—As a general rule, to render the homicide justifiable it must appear that the accused was wholly without fault imputable to him, in bringing about or commencing the difficulty in which the mortal wound was given: *People* v. *Lamb*, 17 Cal. 323; *People* v. *Travis*, 56 Id. 254; and *People* v. *Westlake*, 62 Id. 303, 307, not approving *People* v. *Simons*, 60 Id. 72, which questions the first two cases mentioned. But that there may be a case where the defendant, although commencing the trouble, did all he could to avert it afterwards, and to save himself kills his opponent, see *People* v. *Westlake*, *supra; People* v. *Simons*, *supra.* In *People* v. *Wong Ah Teak*, 63 Id. 544, the point is directly passed upon, and the court say that "one who has sought a combat for the purpose of taking advantage of another may afterward endeavor to decline any further struggle, and if he really and in good faith does before killing the person with whom he sought combat for such purpose, he may justify the killing on the same grounds as he might if he had not originally sought such combat for such purpose." However, generally speaking, "the right of self-defense which justifies a homicide does not include the right to attack:" *People* v. *Westlake*, *supra;* see also note to sec. 198, "Threats."

Subd. 1. Prevention of felony.—The law authorizes the killing of one who is in the act of committing a forcible felony, and even one who appears to be in the act of doing so, for the purpose of prevention, not by way of punishment: *State* v. *Roane*, 2 Dev. L. 58; 1 Whart. Crim. L., 8th ed., sec. 484. But the killing is not excusable if the crime resisted could apparently have been prevented by less violent means; 1 Whart. Crim. L., 8th ed., sec. 498; *Rex* v. *Scully*, 1 Car. & P. 319; see also 4 Bla. Com. 179, 180; 1 Russell on Crimes, 897.

Subds. 2 and 3. Self-defense—Defense of habitation, property, etc.—When a man is assaulted in the course of a sudden brawl or quarrel, he may, in some cases, protect himself by killing the person who assaults him, and excuse himself on the ground of self-defense. But in order to entitle himself to this plea, he must make it appear—1. That before a mortal stroke was given he had declined any further combat; 2. That he then killed his adversary through mere necessity in order to avoid immediate death: 1 East P. C. 280. The law requires that the party assaulted must flee as far as he can, either by reason of some wall or other impediment, or as far as the fierceness of the assault will permit him, before he will be justified in self-defense in killing his assailant: 1 Russell on Crimes, 889; see, however, sec. 198, note. To make it self-defense, it must appear that the slayer had no other possible (or, at least, probable) means of escape: 4 Bla. Com. 184; *People* v. *Sullivan*, 7 N. Y. 396; *People* v. *Walsh*, 43 Cal. 447. In deciding what force it is necessary to employ in resisting an assault, a man must act upon the circumstances as they appear to him at the time, and he is not to be held criminal because a calm survey of the facts afterwards shows that the use of such extreme means might, by a possibility, have been avoided: *Hinton* v. *State*, 24 Tex. 454; *Schnier* v. *People*, 23 Ill. 17; *Patten* v. *People*, 18 Mich. 314; but see *People* v. *Williams*, 32 Cal. 280. The right of self-defense is not confined to those cases where the attack is unexpected. When the attack is actually made, one has a right to repel it, no matter for how long a time he may have anticipated it: 1 Whart. Crim. L., 8th ed., sec. 487.

Where a man is assaulted in his dwelling, he is under no obligation to retreat; "every man's house is his castle," and in defense of it, or to prevent an unlawful entry, he may use such means as may be necessary, even to the taking of life: *Pond* v. *People*, 8 Mich. 150; see generally 3 Bla. Com. 3; 4 Id. 183; 1 Whart. Crim. L., 8th ed., secs. 484-511; 1 Russell on Crimes, 888; Whart. on Homicide, sec. 541; *People* v. *Arnold*, 15 Cal. 476; *People* v. *Batchelder*, 27 Id. 69; *People* v. *Campbell*, 30 Id. 312; *People* v. *Pool*, 27 Id. 572; *People* v. *Scoggins*, 37 Id. 675; *People* v. *Walsh*, 43 Id. 447; *People* v. *Ah Kong*, 49 Id. 6; *People* v. *Perdue*, Id. 425; see sec. 198, and note.

Human life cannot be taken to prevent a mere trespass upon property, but every person in the defense of his property has a legal right to prevent the commission of a felony; and for the purpose of defense and prevention, every one is entitled to use whatever force may be neces-

sary, even to the extent of taking the life of a felonious aggressor: *People* v. *Payne*, 8 Cal. 341; *People* v. *Flanagan*, 60 Id. 2, 3.

The law of self-defense is a law of necessity, and that necessity must be real or apparently real. A party acting under it may act upon appearances, and he will be justifiable in acting upon them, even though they turn out to have been false. Whether they were real or apparently real is for the jury, in a criminal case, to decide upon all the circumstances out of which the necessity springs. If from all the evidence in the case they should find that the circumstances were such as to excite the fears of a reasonable man, and that the defendant, acting under the influence of such fears, killed the aggressor to prevent the commission of a felony upon his person or property, he would not be criminally responsible for his death, although the circumstances might be insufficient to prove by a preponderance of the evidence that the aggressor was actually about to commit a felony upon him: *People* v. *Flanagan*, *supra;* see *People* v. *Strange*, 61 Cal. 496, where defendant, accused of murder, was convicted of manslaughter for killing deceased in resisting an attack while trying to escape from deceased's house, where accused had been discovered in illicit relation with the former's wife; so also *People* v. *Herbert*, 61 Id. 644.

Lawful resistances, by whom and when may be made: See secs. 692–694, *post.*

Apprehension of danger: See note to next section.

If the transcript does not contain the evidence the court cannot reverse for refusal to give instruction: *People* v. *Johnson*, 61 Cal. 142.

Subd. 4. Duty to assist in arrest of felon: See sec. 837, *post; People* v. *Raten*, 63 Cal. 421.

198. *Bare fear not to justify killing.*

SEC. 198. A bare fear of the commission of any of the offenses mentioned in subdivisions two and three of the preceding section, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone.

Mere apprehension of danger is insufficient to justify a homicide. The fear must have been produced by such circumstances as would be sufficient to excite the fears of a reasonable person: *People* v. *Hurley*, 8 Cal. 390; *People* v. *Lombard*, 17 Id. 316. And it is essential that the party killing must have acted under the influence of those fears alone: *People* v. *Ye Park*, 62 Id. 204. The danger may be apparent, not actual, but the defendant must have reasonable cause to believe, and must believe, it to be real: *Flahave's Case*, 58 Id. 249; *People* v. *Morine*, 61 Id. 367, and cases hereinafter; *People* v. *Gray*, Id. 164. The law of self-defense is founded on necessity, and in order to justify the taking of life upon this ground, it must not only appear that the defendant had reason to believe, and did believe, that he was in danger of his life, or of receiving great bodily harm, but it must also appear to the defendant's comprehension, as a reasonable man, that to avoid such danger it was absolutely necessary for him to take the life of the deceased: *People* v. *Scoggins*, 37 Id. 675; *People* v. *Wright*, 45 Id. 260; *People* v. *Anderson*, 44 Id. 65; *People* v. *Arnold*, 15 Id. 476; *People* v. *Campbell*, 30 Id. 312; *State* v. *Stewart*, 9 Nev. 120; *Dupree* v. *State*, 33 Ala. 389; *Commonwealth* v. *Drum*, 58 Pa. St. 20; 1 Russell on Crimes, 888, 891. It is, however, not essential that the jury should find it absolutely necessary for the accused to kill deceased to save himself. It is not necessary for defendant to exhaust all other means: *Flahave's Case*, *supra; People* v. *Westlake*, 62 Cal. 305; *People* v. *Herbert*, 61 Id. 545; *People* v. *Gray*, *supra; People* v. *Morine*, *supra;* see notes to secs. 195–197. For a thorough review of the principles of law contained in these sections, see the cases of *Shorter* v. *People*, 2 N. Y. 193, and *Granger* v. *State*, 5 Yerg. 459; S. C., 26 Am. Dec. 278.

Defendant's duty to flee.—Where an attack is made with a murderous intent, or defendant so believes, it is "not incumbent on the defendant to fly for safety, even if he might more readily have secured it by flight than by standing his ground, and if necessary, killing his adversary:" *People* v. *Ye Park*, 62 Cal. 204.

Threats.—See, as to the effect of threats in determining the character of a homicide, note to *Campbell* v. *People*, 61 Am. Dec. 53–58. Whether the defendant, having heard threats, was justified in arming himself and in using his arms, is a question for the jury; the court cannot instruct them that defendant had a right to arm: *People* v. *Hurtado*, 63 Cal. 289.

A previous threat alone, unaccompanied with any demonstration of force sufficient to excite the apprehension of danger that will justify killing, is not an excuse or justification for a homicide: *People* v. *Iams*, 57 Cal. 115; *People* v. *Westlake*, 62 Id. 305; *People* v. *Scroggins*, 37 Id. 676; *People* v. *Tamkin*, 62 Id. 468. Naked threats, without acts showing real or apparent danger, are not competent evidence: *People* v. *Campbell*, 59 Id. 243.

It is also true, as a general rule, that the threat must have been communicated to the accused, otherwise it could not in any manner have influenced his conduct: *People* v. *Arnold*, 15 Cal. 481; *People* v. *Iams*, 57 Id. 115.

That there may be cases in which evidence of threats, although not communicated to the accused, is admissible, see *People* v. *Arnold*, 15 Cal. 481; *People* v. *Campbell*, 59 Id. 243. In this last case the subject of justification arising from fear occasioned by threats is elaborately considered.

In *People* v. *Travis*, 56 Cal. 251, 253, it is comprehensively stated, and followed in *People* v. *Tamkin*, 62 Id. 468, that "in capital cases past threats and hostile actions, or antecedent circumstances tending to show malice, are admissible, in connection with the homicide, for the purpose of showing apprehensions of personal danger from the deceased, and of illustrating the question which of the parties in a

sudden rencounter or quarrel, in which human life has been taken away, may have been the assailant."

Insulting language is no excuse for a deadly assault; "and this is so even at Truckee:" *People* v. *Tamkin*, 62 Cal. 468, 473; see *supra*, "Threats;" also in note to sec. 192, "No Words of Reproach," etc.

Accused the assailant: See note to sec. 197.

199. *Justifiable and excusable homicide not punishable.*

SEC. 199. The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

CHAPTER II.

MAYHEM.

203. *Mayhem defined.*

SEC. 203. Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem. [*Amendment, approved March* 30, 1874; *Amendments* 1873-4, 427; *took effect July* 1, 1874.]

Mayhem, as defined by Mr. East, is such a bodily hurt as renders a man less able in fighting to defend himself or annoy his adversary; but if the injury be such as disfigures him only, without diminishing his corporal ability, it does not fall within the crime of mayhem: 1 East P. C. 393. Upon this distinction, the cutting off, disabling, or weakening a man's hand, or finger, or striking out an eye, or foretooth, or castrating him, are each mayhem; but the cutting off his ear or nose are not such at common law. By statutes, however, both in England and the United States, the offense has been extended so as to cover all malicious disabling injuries to the person: 1 Whart. Crim. L., 8th ed., sec. 581; *Foster* v. *People*, 50 N. Y. 598; *Godfrey* v. *People*, 63 Id. 207; *Riflemaker* v. *State*, 25 Ohio St. 395; *State* v. *Brown*, 60 Mo. 141; *State* v. *Vowels*, 4 Or. 324; *Eskridge* v. *State*, 25 Ala. 30. The ear is a "member" of a person's body, and biting it off is mayhem: *People* v. *Golden*, 62 Cal. 542. In *Tully* v. *People*, 67 N. Y. 18, it was held that in an indictment for mayhem a premeditated design to maim must be averred, and that the jury must find that there was such design before they could convict. The manner in which this design was evinced, however, and the circumstances establishing it, were held to be matters of evidence, to be proved on the trial, and not necessary to be averred. The issuable fact being whether the particular injury was deliberately and intentionally committed, where a maiming is proved to have been done, the commission of the act with intent to maim is *prima facie* to be inferred: *State* v. *Girkin*, 1 Ired. L. 121; *State* v. *Simmons*, 3 Ala. 497. In New York it must appear that there was a lying in wait, or some other act, showing a premeditated design to do the act complained of: *Godfrey* v. *People*, 63 N. Y. 207, reversing S. C., 5 Hun, 369. Although a specific intent must be shown, the duration of this intent is not material: *Foster* v. *People*, 50 N. Y. 598; *Godfrey* v. *People*, 63 Id. 207; *Molette* v. *State*, 49 Ala. 18; *Slattery* v. *State*, 41 Tex. 619.

Sufficient indictment: See *People* v. *Golden*, 62 Cal. 542.

204. *Mayhem, how punishable.*

SEC. 204. Mayhem is punishable by imprisonment in the state prison not exceeding fourteen years.

CHAPTER III.

KIDNAPING.

207. *Kidnaping defined.*

SEC. 207. Every person who forcibly steals, takes, or arrests any person in this state, and carries him into another country, state, or county, or who forcibly takes or arrests any person with a design to take him out of this state, without having established a claim according to the laws of the United States or of this state, or who hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to go out of this state, or to be taken or removed therefrom, for the purpose and with the intent to sell such person into slavery or involuntary servitude, or otherwise to employ him for his own use, or to the use of another, without the free-will and consent of such persuaded person, is guilty of kidnaping.

Kidnaping, at the common law, is seizing a person, and carrying him to a place where he is out of the protection of the law: 1 Whart. Crim. L., 8th ed., sec. 590. As defined by Blackstone, it is the forcible abduction or stealing away of a man, woman, or child from their own country and sending them into another: 4 Bla. Com. 219. It is considered an aggravated species of false imprisonment: *Click* v. *State*, 3 Tex. 282. It is not necessary that any actual violence or force should be used, nor is a transportation to a foreign country necessary to complete the offense: *State* v. *Rollins*, 8 N. H. 550; *Moody* v. *People*, 20 Ill. 315. See *Redfield* v. *State*, 24 Tex. 133. The requisites of an indictment charging kidnaping were held, in *Click* v. *State*, 3 Tex. 282, to be: 1. An averment of an assault; 2. The carrying away or transporting of the party injured from his own country into another, unlawfully, and against his will: See also 1 Archb. Crim. Pl. 987. In *People* v. *Chu Quong*, 15 Cal. 332, under the act of April 16, 1850, sec. 54, which was substantially the same as section 207, it was held that to constitute the offense of kidnaping it is necessary that the abduction should be accompanied with a removal into another county, state, or territory, or a design to remove the party beyond the limits of the state.

208. *Punishment of kidnaping.*

SEC. 208. Kidnaping is punishable by imprisonment in the state prison not less than one nor more than ten years.

CHAPTER IV.

ROBBERY.

211. *Robbery defined.*

SEC. 211. Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

Robbery is the felonious and forcible taking of the property of another from his person, or in his presence against his will, by violence, or by putting him in fear: 4 Bla. Com. 243; 1 Whart. Crim. L., 8th ed., sec. 846. See the code definition cited: *People* v. *Nelson*, 56 Cal. 77, 80; *People* v. *Gilbert*, 60 Id. 108, 110. In *People* v. *Monahan*, 59 Id. 389, the definition given to the jury was so confused as to warrant a reversal on appeal. It is not necessary that the property should belong to the person from whose possession it was forcibly taken. It is requisite, however, that it should belong to some other person than the defendant, for the owner of property is not guilty of robbery in taking it from the possession of the possessor: *People* v. *Vice*, 21 Id. 344; *People* v. *Shepardson*, 48 Id. 189. The taking must be from the person, or in the presence of the party robbed: *United States* v. *Jones*, 3 Wash. 209; *Rex* v. *Grey*, 2 East P. C. 708; *Commonwealth* v. *Snelling*, 4 Binn. 379; *Rex* v. *Hamilton*, 8 Car. & P. 49; and against his will: *Long* v. *State*, 12 Ga. 293. See application of the requisite taking in *People* v. *Clough*, 59 Cal. 438. So where a thief puts a man in fear, and then drives away his cattle, the offense is complete: 1 Hale P. C. 533. Also, where a man flying from a robber drops his hat, which the robber steals: Id.; 1 Whart. Crim. L., 8th ed., sec. 847. The goods must appear to have been taken *animo furandi*: *Murphy* v. *People*, 3 Hun, 114; *Matthews* v. *State*, 4 Ohio St. 539; *State* v. *Hollyway*, 41 Iowa, 200; *State* v. *Curtis*, 71 N. C. 56; *Long* v. *State*, 12 Ga. 293. But where a creditor assaulted his debtor, and compelled him to give him a check in part payment, and then again assaulted him in order to force him to give him money in payment of the debt, it was held that, there being no felonious intent, the defendant could not be convicted of robbery: *Regina* v. *Hemming*, 4 F. & F. 50. So if a party, under a *bona fide* impression that property is his own, obtain it by menaces, he is not guilty of robbery: *Rex* v. *Hall*, 3 Car. & P. 409; *Brown* v. *State*, 28 Ark. 126; *Hammond* v. *State*, 3 Coldw. 129; *United States* v. *Durkee*, 1 McAll. 196; *Commonwealth* v. *Holland*, 1 Duv. 182; see *People* v. *Vice*, 21 Cal. 344. There must be an actual taking and carrying away: 1 Hale, 533; *Farrell's Case*, 1 Leach, 4th ed., 322, note. In the latter case the defendant stopped the prosecutor as he was carrying a feather-bed on his shoulders, and told him to lay it down or he would shoot him. The prosecutor laid the bed on the ground, and the defendant took it, and while in the act of removing it was apprehended. The court held the offense was not complete, and discharged the defendant. In *Lapier's Case*, 1 Leach, 4th ed., 320, the defendant snatched out a lady's ear-ring, and succeeding in separating it from the ear, and it was afterwards found in her hair, the offense was held complete: See *Rex* v. *Mason*, Russ. & Ry. 419. If "force" is used, "fear" is not an essential ingredient of the crime: *McDaniel* v. *State*, 8 Smed. & M. 401; *Commonwealth* v. *Snelling*, 4 Binn. 379; *State* v. *McCune*, 5 R. I. 60; 1 Whart. Crim. L., 8th ed., sec. 850; *State* v. *Gorham*, 55 N. H. 152; *Commonwealth* v. *Humphries*, 7 Mass. 242; *State* v. *Cowan*, 7 Ired. L. 239; *State* v. *Burke*, 73 N. C. 83; *Bonsall* v. *State*, 35 Ind. 460; *State* v. *Howerton*, 58 Mo. 581. In *State* v. *Broderick*, 59 Id. 318, it appeared that defendant, coming unexpectedly upon the prosecutor, had snatched his watch-chain with such violence as to tear it away from the watch, and from the buttonhole; the offense was held complete. Where the indictment avers fear, fear must be proved: *Glass* v. *Commonwealth*, 6 Bush, 436. It is not necessary that the fear should be of robbery. Fear of bodily hurt is enough: *Commonwealth* v. *Snelling*, 4 Binn. 379. Upon an indictment charging a person as principal in a robbery, he cannot be convicted as an accessary after the

fact: *People* v. *Gassaway*, 28 Cal. 404. The property must be alleged to have been taken from the person of another: *People* v. *Beck*, 21 Id. 385; see *People* v. *Shuler*, 28 Id. 490. See generally, as to what evidence is admissible upon the trial of an indictment for robbery, *People* v. *Jones*, 32 Id. 80; *People* v. *McCrea*, Id. 98; *People* v. *Hoy Yen*, 34 Id. 176. In *People* v. *Pool*, 27 Id. 572, the court characterized the crime of robbery as an outrage, in instructing the jury, and it was held that the defendant was not prejudiced thereby. In *People* v. *Jones*, 53 Id. 58, robbery was held to include larceny.

Larceny and robbery: See sec. 484, note.

212. *What fear may be an element of robbery.*

SEC. 212. The fear mentioned in the last section may be either:

1. The fear of an unlawful injury to the person or property of the person robbed, or of any relative of his or member of his family; or,

2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed at the time of the robbery. [*Amendment, approved March* 30, 1874; *Amendments* 1873-4, 427; *took effect July* 1, 1874.]

Subd. 1. Fear of injury to person or property.—Any threat calculated to produce terror is sufficient: *Long* v. *State*, 12 Ga. 293; *Rex* v. *Reane*, 2 East P. C. 734. Thus, if a man take another's child, and threaten to throw it into the river or otherwise injure it unless the other give him money, this is robbery: Id. So if a man part with his money in order to save his house from being fired, the offense is complete: *Rex* v. *Donnelly*, Id. 718. See *Rex* v. *Winkworth*, 4 Car. & P. 444. To extort money from a person under threat of charging him with an unnatural crime has been held to be robbery: *People* v. *McDaniels*, 1 Park. Cr. 199; 1 Whart. Crim. L., 8th ed., sec. 852, and cases there cited.

213. *Punishment of robbery.*

SEC. 213. Robbery is punishable by imprisonment in the state prison not less than one year.

Cited in *People* v. *Gilbert*, 60 Cal. 108, 110.

CHAPTER V.

ATTEMPTS TO KILL.

216. *Administering poison.*

SEC. 216. Every person who, with intent to kill, administers, or causes or procures to be administered, to another any poison or other noxious or destructive substance or liquid, but by which death is not caused, is punishable by imprisonment in the state prison not less than ten years.

Stats. 1861, 588, sec. 1.

Administering poison.—In *People* v. *Van Deleer*, 53 Cal. 147, the defendant was convicted under section 216, of the crime of "having administered a poisonous and noxious substance" to the prosecuting witness, with intent to kill. The court instructed the jury that "a poisonous substance is one which has an inherent and deleterious property capable of destroying life. A noxious substance is not necessarily poisonous, but may be a substance which is hurtful and injurious." On appeal, the court, in reviewing the definitions given, and holding them to be erroneous, said: "Accurate definitions of those terms cannot be readily given, and perhaps are impossible, and proximate accuracy is all that may be required in the application of the statute in a given case; but the above definitions omit some of the essential elements of the meaning of those terms, as employed in the statute. A poison is defined by Wharton & Stille, Med. Jur., sec. 493, as 'a substance having an inherent deleterious property, which renders it, when taken into the system, capable of destroying life.' A definition stated in 2 Beck's Med. Jur. with approval is as follows: 'A poison is any substance which, when applied to the body externally, or in any way introduced into the system, without acting mechanically, but by its own inherent qualities, is capable of destroying life.' The definition of a poison given by the court would include substances which act upon the system mechanically, so as to destroy life. In that respect the definition was too broad; but such substances are, in our opinion, included within the meaning of the words of the statute, 'other noxious or destructive substance or liquid.' The noxious or destructive substance or liquid mentioned in the statute is not merely such as might, when administered, be hurtful and injurious, but, like a poison, it must be capable of destroying life. Pulverized glass or boiling water, when administered in sufficient quantities, would destroy life, but they are not poisonous. The purpose of the statute is to provide a punishment for attempt to kill, by the means therein mentioned; and in order to bring a case within the statute, it must be proved that the substance or liquid which was administered was capable of destroying life. The intent to kill could not be inferred from

the act of administering a substance which has not the capacity of destroying life. The omission of the quality or capacity from the definition of a noxious substance, as given at the request of the prosecution, rendered it erroneous." In *People* v. *Cuddihi*, 54 Cal. 53, an indictment which recited that the defendant was accused of the crime of "assault with intent to commit murder," and then proceeded to state facts showing that the defendant had administered poison with intent to kill, etc., was held sufficient to bring the case within the provisions of this section.

Administering stupefying drugs: Sec. 222.

217. *Assault with intent to commit murder.*

SEC. 217. Every person who assaults another with intent to commit murder is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

Stats. 1855, 105, sec. 2.

Assault with intent to commit murder. The intent is the gist of this offense, and it must be specifically averred and satisfactorily proved: *State* v. *Neal*, 37 Me. 468; *Smith* v. *State*, 52 Ga. 88; *Johnson* v. *State*, 35 Ala. 363; *Morgan* v. *State*, 13 Smed. & M. 242; *State* v. *Johnson*, 9 Nev. 175; *People* v. *Yslas*, 27 Cal. 630; *People* v. *Murat*, 45 Id. 281; *People* v. *Swenson*, 49 Id. 388; *People* v. *Fine*, 53 Id. 264. It is incumbent upon the prosecution to prove the intent, and if it appear that the assault was made under such circumstances as would, had death ensued therefrom, have mitigated the offense from murder to manslaughter, such intent is not made out: *Wright* v. *State*, 9 Yerg. 342; *Collier* v. *State*, 39 Ga. 31; *Morman* v. *State*, 24 Miss. 54; *State* v. *White*, 41 Iowa, 316; *Vandermark* v. *People*, 47 Ill. 122. A person cannot be convicted of this offense, unless he would have been guilty of murder in the first or second degree, had death resulted from the assault: 1 Whart. Crim. L., 8th ed., sec. 641; *State* v. *Neal*, 37 Me. 468; *State* v. *White*, 41 Iowa, 316; *Meredith* v. *State*, 60 Ala. 441. Premeditation and malice aforethought are also necessary ingredients in this offense, and must be averred and proved: *People* v. *Urias*, 12 Cal. 325.

Within this offense is included the minor offense of a simple assault, and in some cases depending upon whether the assault with intent to commit murder is alleged to have been with a deadly weapon, the offense of an assault with a deadly weapon to do bodily harm: *People* v. *Davidson*, 5 Cal. 134; *People* v. *Vanard*, 6 Id. 562; *People* v. *English*, 30 Id. 214; *Ex parte Ah Cha*, 40 Id. 426; *Ex parte Max*, 44 Id. 579; *People* v. *Fine*, 53 Id. 263; sec. 1159. If the indictment charging this offense avers that the defendant committed the assault with the intent to murder, it is sufficient: *People* v. *Swenson*, 49 Id. 388. But if upon the trial the evidence fails to show an intent to murder, the defendant can only be convicted of a simple assault, and a verdict in such case that the defendant is guilty of an assault to do bodily harm means that he is guilty of a simple assault only: *People* v. *Vanard*, 6 Id. 562; *People* v. *English*, 30 Id. 214; *Ex parte Ah Cha*, 40 Id. 426; *Ex parte Max*, 44 Id. 579. So an indictment which charges an assault with intent to do bodily harm charges a simple assault only: *People* v. *Martin*, 47 Id. 112. But if the indictment avers that the assault was committed with a deadly weapon with intent to murder, then the defendant may be convicted of either an assault with intent to murder, an assault with a deadly weapon to do bodily harm, or a simple assault: *People* v. *Congleton*, 44 Id. 92; *People* v. *Murat*, 45 Id. 281; *People* v. *Lightner*, 49 Id. 226; see sec. 1159; see *State* v. *Robey*, 8 Nev. 312. An assault upon the wrong person by mistake does not excuse the defendant: *People* v. *Torres*, 38 Cal. 141. Mere threats, antecedently made, amount to no excuse for a deadly assault, when the party assailed has made no demonstration of a hostile or equivocal character: *People* v. *Wright*, 45 Id. 260. In *People* v. *Fine*, 53 Id. 264, an instruction to the jury that if they found the defendant guilty they must convict him of the offense charged in the indictment was held erroneous, the defendant having been indicted for an assault with intent to murder. See generally, as to what evidence is admissible on the trial of an indictment for this offense, *People* v. *Shea*, 8 Id. 538; *People* v. *Roach*, 17 Id. 297; *People* v. *Yslas*, 27 Id. 630. As to proper instructions, see *People* v. *English*, 30 Id. 214; *People* v. *Hobson*, 17 Id. 424.

Assault with intent to commit rape, etc.: Sec. 220, note.

Assault with intent to commit other felonies: Sec. 221.

Assault with deadly weapon: Sec. 245, note.

Assault: Sec. 240, note.

Battery: Sec. 242, note.

CHAPTER VI.

ASSAULTS WITH INTENT TO COMMIT FELONY, OTHER THAN ASSAULTS WITH INTENT TO MURDER.

220. *Assault with intent to commit rape.*

SEC. 220. Every person who assaults another with intent to commit rape, the infamous crime against nature, mayhem, robbery, or grand larceny, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

Stats. 1855, 105, sec. 2.

Assault with intent to rob.—For correct instructions to the jury, see *People* v. *Cadd*, 60 Cal. 640.

Assault with intent to commit murder: Sec. 217, note.

Assault with intent to commit rape, etc.—The intent to commit rape or the other offenses mentioned in this section is the essence of this crime: *People* v. *Murat*, 45 Cal. 283; *People* v. *Woody*, 48 Id. 80. The question of intent is a question of fact; and if evidence is introduced tending to prove the intent as alleged, the verdict will not be set aside on the ground that the evidence is insufficient to sustain the verdict: *People* v. *Estrada*, 53 Id. 600. An indictment alleging an assault with intent to commit an act of sexual intercourse by force and violence, and against the will of the woman, is a sufficient charge of an assault with intent to commit rape, without alleging that the force and violence was against her resistance: *People* v. *Brown*, 47 Id. 447. It need not be alleged that the person assaulted was not the wife of the defendant: *People* v. *Estrada*, 53 Id. 600. The language of the statute need not be followed in charging this offense; words conveying the same meaning may be employed: *People* v. *Girr*, Id. 629. An indictment which charges the defendant with feloniously assaulting a female, by throwing her on her back, and attempting to have sexual intercourse with her, with intent to outrage her person, does not charge an assault with intent to commit rape: *People* v. *O'Neil*, 48 Id. 257. A person who stands by when an attempt is made by others to commit a rape, but who does no act to aid, assist, or abet its commission, is not guilty of this offense: *People* v. *Woodward*, 45 Id. 293. Declarations of the defendant of his misconduct with other females are not admissible upon the trial of an indictment charging this offense: *People* v. *Bowen*, 49 Id. 654. An indictment charging the crime of rape and an assault with an intent to commit such offense is not demurrable on the ground that it charges two offenses: *People* v. *Tyler*, 35 Cal. 35.

Assault with intent to commit buggery: See sufficient indictment and correct instructions in *People* v. *Williams*, 59 Cal. 397.

Rape: See sec. 261.

221. *Other assaults.*

SEC. 221. Every person who is guilty of an assault with intent to commit any felony, except an assault with intent to commit murder, the punishment for which assault is not prescribed by the preceding section, is punishable by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both.

Assault generally: Sec. 240, and note.

Assault to murder: Sec. 217, and note.

Assault to commit rape: Sec. 220, and note.

Assault with deadly weapon: Sec. 240, and note. This offense does not include battery, and a conviction or acquittal of the former is no bar to a trial for the latter: *People* v. *Helbing*, 61 Cal. 620.

222. *Administering stupefying drugs.*

SEC. 222. Every person guilty of administering to another any chloroform, ether, laudanum, or other narcotic, anæsthetic, or intoxicating agent, with intent thereby to enable or assist himself or any other person to commit a felony, is guilty of felony.

Administering poison: Sec. 216.

CHAPTER VII.

DUELS AND CHALLENGES.

225. *Duel defined.*

SEC. 225. A duel is any combat with deadly weapons, fought between two or more persons, by previous agreement or upon a previous quarrel.

Duel defined.—At common law, a party killing another in a deliberate duel was guilty of murder; for wherever two persons in cold blood meet and fight on a precedent quarrel, and one of them is killed, the other is guilty of murder; and cannot help himself by alleging that he was first struck by deceased, or that he had often declined to meet his adversary, and was prevailed upon by his importunity; or that it was his intent only to vindicate his reputation; or that he meant, not to kill, but only to disarm his adversary. He has deliberately engaged in an act highly unlawful, in defiance of the laws, and he must at his peril abide the consequences; and upon this principle, wherever two persons quarrel over night, and appoint to fight the next day, or quarrel in the morning and agree to fight in the afternoon, or at any time afterward so considerable that in common intendment it must be presumed that the blood was cooled, the person killing will be guilty of murder: 1 Hawk. P. C., c. 31, sec. 22; 1 East P. C. 242; 1 Russell on Crimes, 727; 1 Whart. on Crim. L., 8th ed., sec. 482. But in this state it is held that the fighting of a duel with fatal results is not murder, but a special offense under the statute: *Terry* v. *Bartlett*, 14 Cal. 651.

226. *Punishment for fighting a duel, when death ensues.*

SEC. 226. Every person guilty of fighting any duel, from which death ensues within a year and a day, is punishable by imprisonment in the state prison not less than one nor more than seven years.

227. *Punishment for fighting a duel, sending or accepting a challenge.*

SEC. 227. Every person who fights a duel, or who sends or accepts a challenge to fight a duel, is punishable by imprisonment in the state prison or in a county jail not exceeding one year. [*Amendment, approved March*, 30, 1874; *Amendments* 1873-4, 428; *took effect July* 1, 1874.]

228. *Persons fighting duels disfranchised.*

SEC. 228. Any citizen of this state who shall fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this state or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage, and shall be declared so disqualified in the judgment, upon conviction. [*Amendment, approved April* 6, 1880; *Amendments* 1880, 8 (*Ban. ed.* 129); *took effect immediately.*]

This section follows section 2 of article 20 of the constitution.

229. *Posting for not fighting.*

SEC. 229. Every person who posts or publishes another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written, or printed, to or concerning another, for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor.

230. *Duties of officers to prevent duels.*

SEC. 230. Every judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, who has knowledge of the intention on the part of any persons to fight a duel, and who does not exert his official authority to arrest the party and prevent the duel, is punishable by fine not exceeding one thousand dollars.

231. *Leaving the state with intent to evade laws against dueling.*

SEC. 231. Every person who leaves this state with intent to evade any of the provisions of this chapter, and to commit any act out of this state such as is prohibited by this chapter, and who does any act, although out of this state, which would be punishable by such provisions if committed within this state, is punishable in the same manner as he would have been in case such act had been committed within this state.

232. *Witness's privilege.*

SEC. 232. No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding.

"The sections relating to duels are founded upon the provisions of an act of 1855, Stats. 1855, 152, sec. 1, and of sections 43 and 44 of the crimes and punishment act of 1850, and sections 293, 294, 300, 301, and 303 of the New York penal code. No provision has ever been made for carrying into effect the constitutional provisions on the subject, and although fighting by previous appointment, without the use of deadly weapons, was by the act of 1850, Stats. 1850, 229, made a felony, yet there was no punishment affixed to the offense of dueling, unless death ensued. The code supplies these omissions. Sections 2 and 3 of the act of 1855, giving remedies by action for injuries, etc., arising from dueling, are inserted in the Civil Code. See Civ. Code, secs. 3347, 3348:" Commissioners' note.

CHAPTER VIII.

FALSE IMPRISONMENT.

236. *False imprisonment defined.*

SEC. 236. False imprisonment is the unlawful violation of the personal liberty of another.

False imprisonment.—Mr. Archbold, in speaking of the term "false imprisonment," says that though technically it does not convey any sufficiently definite meaning, it means in law any illegal imprisonment, either without any process whatever or under color of process, wholly illegal, without regard to any question whether any crime has been committed or not or a debt due: 1 Archb. Crim. Pl. 946. To constitute this offense, there must be a detention of the person, and such detention must be unlawful. It is not necessary that the person should be confined in a prison; confinement in a private house, or a forcible detention on the street, is sufficient: *Floyd* v. *State*, 12 Ark. 43; *Johnson* v. *Tompkins*, 1 Baldw. 571. Any detention will be unlawful unless there be sufficient authority for it, arising either from some process from a court of justice, or from some warrant of a legal officer having power to commit, or arising from some other special cause sanctioned, for the necessity of the thing, either by common law or by statute: 1 Archb. Crim. Pl. 646; *Crowell* v. *Gleason*, 10 Me. 325. In some cases the detention may be unlawful though the warrant or process upon which it is made is regular, as on a Sunday, or in a place privileged from arrests: 4 Bla. Com. 218; 1 Hawk. P. C., c. 60, sec. 7; *Prentis* v. *Commonwealth*, 16 Am. Dec. 782, note 784; *Bissell* v. *Gold*, 19 Id. 485. Words are sufficient to constitute an imprisonment if they impose a restraint upon the person. Where, for instance, a party refused to pay a delinquent tax until she was arrested, and the officer then said, "I arrest you," but did not touch her, and she thereupon paid the tax, it was held this amounted to a false imprisonment: Id. 488. See *Emery* v. *Chesley*, 18 N. H. 198; *Courtoy* v. *Dozier*, 20 Ga. 369; *Searls* v. *Viets*, 2 Thomp. & C. 224. False imprisonment is a mixed question of law and fact: whether there was a detention of the party, against his will, amounting to an imprisonment, is a question of fact; and whether the authority under which it was effected was lawful, or was such as did not justify the officer or jailer, etc., in the detention, is a question of law, depending upon the circumstances of each particular case. The prosecution must prove the imprisonment, and the law then presumes it unlawful, until the contrary is shown. It is for the defendant to justify it by proving that it was lawful: 1 Archb. Crim. Pl. 949. In this state, false imprisonment is only a misdemeanor: *People* v. *Ebner*, 23 Cal. 158.

Reconfining person discharged on habeas corpus: Sec. 363, *post*.

237. *False imprisonment, how punished.*

SEC. 237. False imprisonment is punishable by fine not exceeding five thousand dollars, or by imprisonment in the county jail not more than one year, or both.

CHAPTER IX.

ASSAULT AND BATTERY.

240. *Assault defined.*

SEC. 240. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

241. *Assault, how punished.*

SEC. 241. An assault is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months.

Section cited *People* v. *Helbing*, 61 Cal. 620.

Assault with deadly weapon: Sec. 245.

Assault.—The definition here given is substantially that of the common law: *People* v. *Yslas*, 27 Cal. 630. It is cited in *People* v. *Helbing*, 61 Id. 620. To constitute an assault, there must be an intentional attempt by violence to do an injury to the person of another. It must be intentional. If there is no present purpose to do an injury there is no assault. The present ability to carry the party's intention into effect is not, however, in all cases necessary. It will be sufficient if the aggressor, by his conduct, lead another to suppose that he will do what he apparently attempts to do. There must also be an unlawful attempt: *People* v. *Yslas*, *supra*.

A purpose not accompanied by an effort to carry into immediate execution falls short of an assault. The mere use of words can never amount to an assault. But rushing towards another with menacing gestures, and with an intent to strike, is an assault, though the accused is prevented from striking before he comes near enough to do so: *State* v. *Davis*, 1 Ired. L. 125; *People* v. *Yslas*, 27 Cal. 630. But mere threatening gestures, unaccompanied by such intent, although sufficient to cause a person to believe that he was about to be struck, do not amount to an assault,

Thus, when the defendant shook his whip at the prosecutor, saying at the same time, "If you were not an old man I would knock you down:" *Held*, no assault, unless the jury should be satisfied that there was a present purpose to strike: *State* v. *Crow*, 1 Ired. 375. See also *Commonwealth* v. *Eyre*, 1 Serg. & R. 347; *United States* v. *Hand*, 2 Wash. 435. Threatening another with a weapon to compel him to submit to a demand, intending to strike if he refuses, but not to strike if he submits, is an assault, although the other party may submit to the demand: *State* v. *Morgan*, 3 Ired. 186; *People* v. *McMankin*, 8 Cal. 547. Holding a pistol which purports to be loaded so near another person as would endanger life if it were fired, although the pistol is not in fact loaded, is an assault: *State* v. *Smith*, 2 Humph. 457; *Rex* v. *Parfait*, 1 Leach, 4th ed., 19; 1 East P. C. 416; *Rex* v. *Thomas*, 1 Leach, 4th ed., 330; 1 East P. C. 417.

If the party suffering the violence has consented to it, there is no assault. Thus, although a child of tender years cannot legally consent to a rape upon her, yet she may consent to an attempt to commit it; and such an attempt, if committed with her consent, is not an assault: *Regina* v. *Cockburn*, 3 Cox C. C. 543; *Regina* v. *Read*, Id. 266; 1 Denio, 377; *Regina* v. *Mehegan*, 7 Cox C. C. 145. Mere failure to resist is not enough: *Regina* v. *McGavaran*, 6 Id. 64. So where a medical man had criminal connection with a girl fourteen years of age, she consenting from a *bona fide* belief that the defendant was treating her medically, as he represented he was doing, he was held properly convicted of an assault: *Regina* v. *Case*, 4 Id. 220. The administering of poison is also an assault. Also, the malicious application of injurious drugs: 1 Whart. Crim. L., 8th ed., sec. 610; *Commonwealth* v. *Stratton*, 114 Mass. 303; but see *Garnet* v. *State*, 1 Tex. App. 605; see also secs. 216, note, and 221. In this state a defendant indicted for an assault to commit murder, and found guilty of an "assault with intent to do bodily injury," is only guilty of a simple assault, and can only be punished for that offense, and not for a felony: *People* v. *Vanard*, 6 Cal. 562; *People* v. *English*, 30 Id. 214; *Ex parte Ah Cha*, 40 Id. 426; *Ex parte Max*, 44 Id. 579.

Assault with intent to commit murder: Sec. 217, note.

Assault with attempt to commit rape, etc.: Sec. 220, note.

Assault with deadly weapon: Sec. 245, note.

Assault with intent to commit crime against nature: Sec. 220, and note.

Assault with intent to rob: See sec. 220, and note.

242. *Battery defined.*

SEC. 242. A battery is any willful and unlawful use of force or violence upon the person of another.

Battery.—The definition here given of battery is substantially the same as that given to the crime of assault and battery by the act concerning crimes and punishments, passed April 16, 1850, Stats. 1850, 234, sec. 51. As defined in that section, "assault and battery is the unlawful beating of another." This is the definition given to battery by Blackstone: 3 Com. 120. The least touching of another's person willfully or in anger is sufficient to complete this offense, as the taking hold of the coat, or laying the hands on the person of another, in a rude and insolent manner: *United States* v. *Ortega*, 4 Wash. 531. So the spitting in another's face; sprinkling paint on him; holding him by the arm; pushing another against him; striking a horse upon which he is riding, whereby he is thrown; or throwing water upon him—are all acts of violence which constitute battery: Wheel. 410; 6 Mod. 142; Id. 172; Bull. N. P. 16; 1 Mod. 24; 3 Nev. & P. 564. It is not necessary, however, in order to constitute this offense, that the act complained of should be actually accompanied with violence, provided it be improper in itself, and be done against the free-will of the party complaining, or without his consent, whether such party be in a condition to assent or not: See sec. 240, note. A person may be guilty of battery by aiding, abetting, or procuring the act, although he does not actively participate in it: 1 Archb. Crim. Pl. 912, and cases there cited. An assault or battery is justifiable when committed in self-defense, or in defense of one's wife, child, servant, or property: Id. 920, 921. Since the adoption of the Penal Code the crime of "assault and battery" has not existed in this state, and to charge a defendant with such an offense is to charge him with two separate and distinct offenses, to wit, an assault, and a battery. Advantage of such misjoinder must be taken by demurrer or it is waived. It cannot be taken advantage of on an application to release the defendant on *habeas corpus*, on the ground that he is charged with no crime known to the law: *Ex parte Balch*, reported in San Francisco Examiner, January 16, 1877.

Battery includes assault, but assault does not include battery: *People* v. *Helbing*, 61 Cal. 620.

243. *Battery, how punished.*

SEC. 243. A battery is punishable by fine of not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both. [*Amendment, approved February* 26, 1881; *Statutes and Amendments* 1881, 11.]

Punishment of battery.—After a prisoner had served six months in the house of correction, under a sentence that he be imprisoned three years, he is entitled to his discharge: *Ex parte Bulger*, 60 Cal. 438.

244. *Assaults with caustic chemicals.*

SEC. 244. Every person who willfully and maliciously places or throws, or causes to be placed or thrown, upon the person of another, any vitriol, corro-

sive acid, or caustic chemical of any nature, with the intent to injure the flesh or disfigure the body of such person, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

245. *Assault with deadly weapon.*

SEC. 245. Every person who commits an assault upon the person of another with a deadly weapon or instrument, or by any means or force likely to produce great bodily injury, is punishable by imprisonment in the state prison, or in a county jail, not exceeding two years, or by fine not exceeding five thousand dollars, or by both. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 428; *took effect July* 1, 1874.]

Assault with a deadly weapon.—An indictment charging this offense is sufficient, if in general terms it aver the assault to have been made "with a deadly weapon." The weapon by name does not, in such case, become a necessary ingredient of the crime, but the nature of the weapon, as being deadly or otherwise, is alone important; and it is essential to aver it in some appropriate way to have been deadly in its character: *People* v. *Congleton*, 44 Cal. 92. It is not sufficient to charge that the assault was made with a pistol. A pistol may or may not be a deadly weapon: *People* v. *Jacobs*, 29 Id. 579. The weapon with which the assault is committed should be alleged and found, and whether it is made with a deadly weapon is of the substance of this offense, and distinguishes it from an ordinary assault: *People* v. *Davidson*, 5 Id. 134; *People* v. *Vanard*, 6 Id. 562; *People* v. *English*, 30 Id. 214; *Ex parte Ah Cha*, 40 Id. 426; *Ex parte Max*, 44 Id. 579. An information charging "an assault by means likely to produce great bodily injury, to wit, with a brickbat weighing about five pounds," states an offense within the jurisdiction of the superior court: *People* v. *Fahey*, 64 Id. 342. Whether a pick-handle is a deadly weapon, see *People* v. *Fuqua*, 58 Id. 245.

A verdict, however, which finds the defendant guilty of an assault to commit great bodily injury, without stating it to have been with a deadly weapon, imports nothing more than that the defendant is guilty of a simple assault: *Ex parte Ah Cha*, 40 Cal. 426; *People* v. *Murat*, 45 Id. 281; *Ex parte Max*, 44 Id. 579. Upon such a verdict, a defendant cannot be confined in the state prison, the crime of which he has been convicted being simply a misdemeanor. In *Ex parte Ah Cha*, 40 Id. 426, a judgment sentencing the defendants to confinement in the state prison, upon a verdict convicting them of "an assault to commit great bodily injury," was held absolutely void, and the defendants released on *habeas corpus*. In *Ex parte Max*, 44 Id. 579, this ruling was held erroneous, and a judgment of confinement in the state prison upon such a verdict was held not void, but erroneous, subject to be corrected on appeal. A person convicted of this offense has no right of appeal to the supreme court, if the judgment direct that he be confined in the county jail: *People* v. *Aubrey*, 53 Id. 427; *People* v. *Cornell*, 16 Id. 187.

Assault with intent to commit murder: Sec. 217, note.

Assault: Sec. 240, note.

Deadly weapon is one likely to produce death or great bodily injury. Identifying the weapon is a question for the jury, "the character of the weapon is ordinarily pronounced by the law." It may be, however, a mixed question of law and fact: *People* v. *Fuqua*, 58 Cal. 245.

Assault producing great bodily injury.—Indictment charging defendant with throwing one Ah Wee out of a third story window states an offense under this section: *People* v. *Emmons*, 61 Cal. 487.

Alleging intent to produce injury—Sufficiency of indictment.—"We think that the amendment [of 1874 to the above] has worked a material change in the section, and that as it now stands it is unnecessary to charge in the indictment, or for the jury to find, that the assault was made with a deadly weapon with intent to produce great bodily injury. It is sufficient to follow the language of the statute in charging the offense, and, by parity of reasoning, it is sufficient for the jury to find in the language of the charge. We therefore conclude that the point is not well taken: See *Ex parte Donahue*, 3 West Coast Rep. 438:" *People* v. *Turner*, 3 Id. 758; S. C., Id. 636.

Instructions, correct: See *People* v. *Bird*, 60 Cal. 7.

New trial.—Insufficiency of affidavit to show that defendant took no part in the assault: *People* v. *Chin Ah Hong*, 61 Cal. 376.

CHAPTER X.

LIBEL.

248. *Libel defined.*

SEC. 248. A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural or alleged defects of one who is alive, and thereby to expose him to public hatred, contempt, or ridicule. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 428; *took effect July* 1, 1874.]

Libel defined: See Civ. Code, sec. 45.

A libel is a publication in printing, writing, signs, or pictures, imputing to another something which has a tendency to injure his reputation; to disgrace or degrade him in society, and lower him in the esteem and the opinion of the world; or to bring him into public hatred, contempt, or ridicule: *State* v. *Jeandell*, 5 Harr. (Del.) 475; *Layton* v. *Harris*, 3 Id. 406; *Commonwealth* v. *Clapp*, 4 Mass. 163; *Obaugh* v. *Fisher*, 4 Pike, 110; *State* v. *Farley*, 4 McCord, 317; see Townshend on Slander and Libel, 3d ed., 71, note.

Libelous publications.—The following publications have been held to be libelous: A newspaper article which imputes to a person grave offenses and dishonest practices, which, if established, would bring him into general contempt and disgrace: *Wilson* v. *Fitch*, 41 Cal. 363. Any publication, the tendency of which is to degrade and injure another person, or to bring him into contempt, hatred, or ridicule, or which accuses him of a crime punishable by law, or of an act odious and disgraceful in society: *Dexter* v. *Spear*, 4 Mason, 115; *Fonville* v. *McNease*, Dudley (S. C.), 304; *Adams* v. *Lawson*, 17 Gratt. 250. A false and malicious writing, containing an insinuation that one has been guilty of perjury: *Dillhouse* v. *Dunning*, 6 Conn. 391; *Mallerich* v. *Mertz*, 19 La. Ann. 194; *Haws* v. *Stanford*, 4 Sneed, 520; *Hutts* v. *Hutts*, 62 Ind. 214. Charging a person with being a drunkard, a cuckold, and a tory: *Giles* v. *State*, 6 Ga. 276. A publication which assails the integrity or capacity of a judge: *Robbins* v. *Treadway*, 2 J. J. Marsh. 540; *Spiering* v. *Andrae*, 45 Wis. 330. A correct account of judicial proceedings, if accompanied with comments and insinuations, tending to asperse a man's character: *Commonwealth* v. *Blanding*, 3 Pick. 304; *Thomas* v. *Croswell*, 7 Johns. 264. A newspaper advertisement describing a horse as having been stolen, and giving the name of the person "believed to be the thief:" *Simmons* v. *Holster*, 13 Minn. 249. An address to the people signed by the chairman of a meeting of citizens, containing false and slanderous charges against a candidate: *Lewis* v. *Few*, 5 Johns. 1. A publication ironically charging plaintiff with insanity: *Southwick* v. *Stevens*, 10 Id. 443; *Powers* v. *Du Bois*, 17 Wend. 63. Writing of a person that "he is thought no more of than a horse-thief and a counterfeiter:" *Nelson* v. *Musgrave*, 10 Mo. 648. A publication charging one with having paid a large sum of money for procuring for another an appointment to office: *Weed* v. *Foster*, 11 Barb. 203. A publication purporting to give information as to the credit and standing of a mercantile firm, and charging one member thereof with dishonesty: *Taylor* v. *Church*, 1 E. D. Smith, 279. A malicious publication of an obituary notice of a person living: *McBride* v. *Ellis*, 9 Rich. 313. Publishing of a man that he has put in circulation a false, scandalous, and scurrilous report: *Colby* v. *Reynolds*, 6 Vt. 489. Publishing of a lawyer that he is a "pettifogging shyster:" *Bailey* v. *Kalamazoo Pub. Co.*, 40 Mich. 251. A charge of smuggling goods into the country, contrary to the revenue laws: *Stilwell* v. *Barter*, 19 Wend. 487.

249. *Punishment of libel.*

SEC. 249. Every person who willfully, and with a malicious intent to injure another, publishes or procures to be published any libel, is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding one year.

250. *Malice presumed.*

SEC. 250. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

Malice in the publisher of a libel does not imply personal ill-will towards the person libeled: *Commonwealth* v. *Bonner*, 9 Met. 410.

Malice defined: See sec. 7, subd. 4.

251. *Truth may be given in evidence.*

SEC. 251. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. The jury have the right to determine the law and the fact.

Constitutional provision is the same: Sec. 9, art. 1.

Province of the jury.—The provision of the above section, that "the jury have the right to determine the law and the fact," is not to be interpreted as giving to the jury the right to decide all legal problems or questions that may arise during the progress of a trial for libel. Prior to the enactment of the Fox libel act, the usual practice in criminal trials for libel was for the court, where there were no facts or circumstances which raised any justification or excuse in point of law, to direct the jury to find the defendant guilty, if they were satisfied as to the fact of publication and the truth of the innuendoes: *Rex* v. *Owen*, 10 St. Tr. App. 169; *Rex* v. *Nutt*, 3 T. R. 430, note; *Rex* v. *Woodfall*, 5 Burr. 2661; *Rex* v. *Withers*, 3 T. R. 428. The purport of these and like decisions was, that it was purely a question of law whether a given writing with a certain meaning, published without lawful excuse, be criminal, a question that the court, and not the jury, should decide.

The Fox libel act, passed in the year 1792, reads as follows: "Whereas, doubts have arisen whether on the trial of an indictment or information for the making or publishing any libel, where an issue or issues are joined between the king and the defendant or defendants on the plea of not guilty pleaded, it be competent to the jury impaneled to try the same to give their verdict upon the whole matter in issue: Be it therefore declared and enacted by the king's most excellent majesty, by and with advice and consent of the lords, spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that on every such trial the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment or information; and shall not be required or directed by the court or judge before whom such indictment or information shall be tried, to find the defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information.

"II. Provided always, that on every such trial the court or judge before whom such indictment or information shall be tried, shall, according to their or his discretion, give their or his opinion and directions to the jury on the matter in issue between the king and the defendant or defendants, in like manner as in other criminal cases.

"III. Provided also, that nothing herein contained shall extend or be construed to extend to prevent the jury from finding a special verdict in their discretion as in other criminal cases.

"IV. Provided also, that in case the jury shall find the defendant or defendants guilty, it shall and may be lawful for the said defendant or defendants to move in arrest of judgment, on such ground and in such manner as by law he or they might have done before the passing of this act; anything herein contained to the contrary, notwithstanding:" 32 Geo. III., c. 60.

Justification.—The justification must be as broad as the libel: *Stilwell* v. *Barter*, 19 Wend. 487; *Skinner* v. *Powers*, 1 Wend. 451. It is accordingly held that it is not a sufficient defense to show merely that the matter published was true, without showing it to have been published from "good motives, and for justifiable ends," and *vice versa: Barthelemy* v. *People*, 2 Hill (N. Y.), 248; *Commonwealth* v. *Clapp*, 4 Mass. 163; *Commonwealth* v. *Blanding*, 3 Pick. 304. Evidence that defendant believed the charges contained in the libel to be true is inadmissible: *Commonwealth* v. *Snelling*, 15 Id. 337. Nor is the general bad character of the person against whom the charges are made a good defense: Id. Nor ignorance on the part of the publisher, that the matter is libelous: *Curtis* v. *Mussey*, 6 Gray, 261. Nor can a charge of specific acts of bad conduct be justified by proof of other instances not specified in the writing: *Barthelemey* v. *People*, 2 Hill (N. Y.), 248. Nor can the defendant justify by proving that the libelous matter had been a general and currently believed report in the neighborhood: *State* v. *White*, 7 Ired. 180; *Hampton* v. *Wilson*, 4 Dev. 468. A letter to a woman containing libelous matter concerning her suitor cannot be justified on the ground that the writer was her friend and former pastor, and that the letter was written at the request of her parents: "*The Count Joannes*" v. *Bennett*, 5 Allen, 169. The burden of proving the justification is upon the defendant: *Commonwealth* v. *Bonner*, 9 Met. 410.

252. *Publication defined.*

SEC. 252. To sustain a charge of publishing a libel, it is not needful that the words or things complained of should have been read or seen by another. It is enough that the accused knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read or seen by any other person than himself.

Publication of libel.—To enable a party to maintain an action for the publication of a libel, it is necessary that the matter should have been published concerning the plaintiff, and that it should have been so understood by at least some one third person: *De Witt* v. *Wright*, 57 Cal. 576.

253. *Liability of editors and publishers.*

SEC. 253. Each author, editor, and proprietor of any book, newspaper, or serial publication, is chargeable with the publication of any words contained in any part of such book, or number of such newspaper or serial.

254. *Publishing a true report of public official proceedings privileged.*

SEC. 254. No reporter, editor, or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which shall not be implied from the mere fact of publication.

Publishing report of official proceedings, privileged.—A garbled report of judicial proceedings, or a true report to which is added comments and insinuations tending to asperse a man's character, is libelous: *Thomas* v. *Croswell*, 7 Johns. 264; *Commonwealth* v. *Blanding*,

3 Pick. 304. A full, fair, and correct account of a trial is a privileged publication, but it should contain nothing in addition to what forms, strictly and properly, the legal proceedings: *Stanley* v. *Webb*, 4 Sandf. 21; *Edsall* v. *Brooks*, 17 Abb. Pr. 221. See also *Impeachment of Judge Parsons*, 1 Cal. 539.

255. *Extent of privilege.*

SEC. 255. Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of their being so connected.

256. *Other privileged communications.*

SEC. 256. A communication made to a person interested in the communication by one who was also interested, or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is a privileged communication.

257. *Threatening to publish libel.*

SEC. 257. Every person who threatens another to publish a libel concerning him, or any parent, husband, wife, or child of such person, or member of his family, and every person who offers to prevent the publication of any libel upon another person, with intent to extort any money or other valuable consideration from any person, is guilty of a misdemeanor.

"This section was intentionally confined to threats uttered directly to the person about to be libeled. The ground upon which the criminal remedy for libel is allowed is the tendency of a libel to provoke a breach of the peace. A threat to publish one uttered to third persons, and only reaching the injured party through indirect repetition, is no more calculated to create disturbance of the peace than other forms of slander, and should not be distinguished from slander in the remedy allowed. See also statutes 6 & 7 Vict., c. 96, sec. 3, as to offers to prevent publication of libel:" Commissioners' note.

TITLE IX.

OF CRIMES AGAINST THE PERSON AND AGAINST PUBLIC DECENCY AND GOOD MORALS.

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CHAPTER I.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

261. *Rape defined.*

SEC. 261. Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances:

1. Where the female is under the age of ten years;

2. Where she is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;

3. Where she resists, but her resistance is overcome by force or violence;

4. Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution; or by any intoxicating, narcotic, or anæsthetic substance, administered by or with the privity of the accused;

5. Where she is, at the time, unconscious of the nature of the act, and this is known to the accused;

6. Where she submits under the belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce such belief.

Rape, generally.—"This section is an extension of the generally received definition of rape. . . . . The code presents a definition which includes the various instances which have been adjudged to constitute the offense, with some others which have been held not to fall within the limited definition of the common-law authorities, but to which the same penalties ought to be extended:" Commissioners' statement.

This offense is defined by Blackstone to be the carnal knowledge of a woman by force and against her will: 4 Bla. Com. 210. Wharton defines it to be the act of carnal knowledge of a woman without her conscious permission, such permission not being extorted by force or fear of immediate bodily harm: 1 Whart. Crim. L., 8th ed., sec. 550. It will be perceived that the definition given by the code is much more comprehensive than that given by the common-law writers. In the annotated edition thereof, published in 1872, this definition is stated to include "the various instances which have been adjudged to constitute the offense, with some others which have been held not to fall within the limited definition of the common-law authorities, but to which the same penalties ought to be extended." Force is sometimes considered as an essential to this offense: 1 East P. C. 434; *Bradley* v. *State*, 32 Ark. 704; but this is not necessary in those cases in which acquiescence is caused by fraud or stupefaction. An indictment should allege, however, that the offense was "forcibly" committed, and in the cases just mentioned this allegation is considered proved by proof of penetration: *Commonwealth* v. *Fogerty*, 8 Gray, 489; *State* v. *Johnson*, 67 N. C. 55; 1 Whart. Crim. L., 8th ed., sec. 551. Force, or the intent to use force, in all cases where acquiescence has not been obtained by fraud or stupefaction, is essential to the offense, and must be averred and proved: 1 Whart. Crim. L., 8th ed., sec. 550; *Taylor* v. *State*, 50 Ga. 79; *State* v. *Hagerman*, 47 Iowa, 151; *McNair* v. *State*, 53 Ala. 453; *Dawson* v. *State*, 29 Ark. 117; *Bradley* v. *State*, 32 Id. 704; *Smith* v. *State*, 12 Ohio St. 466; *State* v. *Erickson*, 45 Wis. 86; *People* v. *Brown*, 47 Cal. 447; *People* v. *Royal*, 53 Id. 62. Resistance on the part of the woman must also be established; but it is not necessary to show that she used all the resistance in her power, if her resistance was *bona fide*, and "was the utmost, according to her lights, that she could offer:" 1 Whart. Crim. L., 8th ed., sec. 557; *Commonwealth* v. *McDonald*, 110 Mass. 406; *Jenkins* v. *State*, 1 Tex. App. 346; *State* v. *Dohring*, 59 N. Y. 374; *Mills* v. *State*, 52 Ind. 187. On the trial of an indictment for this offense, it is necessary to prove: 1. Penetration. Any sexual penetration, however slight, is sufficient to complete the crime: See sec. 263. Proof of emission is not necessary: 1 Whart. Crim. L., 8th ed., sec. 554. There must be specific proof of some penetration, though such proof may be inferred from circumstances aside from the statement of the party injured: *Commonwealth* v. *Beale*, 2 Whart. & Stille's Med. Jur., sec. 245; *State* v. *Tarr*, 28 Iowa, 397; *Brauer* v. *State*, 25 Wis. 413. And 2. That it was done by force, and against the will of the woman. This element of force, however, as above stated, is not necessary in those cases where the crime is committed by fraud or stupefaction.

Subd. 1. Female under ten years.—The law presumes a female of tender years incapable of consenting to sexual intercourse, and a man who has connection with such a female, although she may have in fact consented thereto, is guilty of rape: 1 Whart. Crim. L., 8th ed., sec. 558; *Dawson* v. *State*, 29 Ark. 120; *Stephens* v. *State*, 11 Ga. 225; *People* v. *McDonald*, 9 Mich. 150; *Hays* v. *People*, 1 Hill (N.Y.), 351; *State* v. *Farmer*, 4 Ired. 224; *Anschicks* v. *State*, 6 Tex. App. 524; see *O'Meara* v. *State*, 17 Ohio St. 515. This provision embodies this well-settled rule of law. In Louisiana and Virginia a female under twelve years of age is considered incapable of consenting to sexual intercourse: *State* v. *Tilman*, 30 La. Ann. 1249; *Lawrence* v. *Commonwealth*, 30 Gratt. 846. At the common law, the age at which she was considered incapable of consenting was ten years and under: *State* v. *Stephen*, 11 Ga. 227. It is no excuse that the person accused believed the girl to be over such age, or that she told him that she was: *Lawrence* v. *Commonwealth*, 30 Gratt. 845. He takes the risk, and if she is under that age, he is guilty: Id.

Subd. 2. Female incapable of consenting, through lunacy, etc.—The commissioners' cite *Regina* v. *Fletcher*, 8 Cox C. C. 131, and say: "It is probable that an act of intercourse with a woman above the age of ten years, but mentally incapable of giving legal consent, would be held to be rape." This provision was, no doubt, taken from the decision in the case of *Regina* v. *Fletcher*, *supra*, where it was held that rape may be committed, although the carnal knowledge of the woman is not against her will, provided it is accomplished by force and without her consent. In that case the defendant was convicted of rape, it appearing that he had had carnal knowledge of a girl

aged thirteen years, of imbecile mind, by force, and without her consent, although it did not appear that it was against her will. It is now generally conceded that forcible intercourse with a female incapable, through imbecility of mind, of giving legal consent, is rape, although she was above ten years of age and offered no resistance: *Queen* v. *Ryan*, 2 Cox C. C. 115; *State* v. *Tarr*, 28 Iowa, 397; *Stephen* v. *State*, 11 Ga. 227; see *State* v. *Crow*, 10 West. L. J. 501.

Subd. 3. Resistance overcome by force or violence.—This provision, and the first part of the next, embrace the ordinary cases of rape. Resistance is an incident by which consent can be determined; and it is necessary to show that the woman offered such resistance as was in her power. Consent, however reluctant, if free, negatives rape: 1 Whart. Crim. L., 8th ed., sec. 557; *Anschicks* v. *State*, 6 Tex. App. 524; *Commonwealth* v. *McDonald*, 110 Mass. 405; *Anderson* v. *State*, 41 Wis. 430; *People* v. *Brown*, 47 Cal. 447. See generally, as to resistance overcome by force, *Charles* v. *State*, 11 Ark. 389; *Pollard* v. *State*, 2 Iowa, 567; *Wyatt* v. *State*, 2 Swanst. 394; *Lewis* v. *State*, 30 Ala. 54; *State* v. *Blake*, 39 Me. 322; *Barney* v. *People*, 22 Ill. 160. As to resistance overcome by fear, see *Pleasant* v. *State*, 13 Ark. 360; *Wright* v. *State*, 4 Humph. 194; *State* v. *Ruth*, 21 Kan. 138; *Turner* v. *People*, 33 Mich. 364; *Regina* v. *Wright*, 4 F. & F. 967; *Regina* v. *Day*, 9 Car. & P. 722; *Regina* v. *Hallett*, Id. 748; *Regina* v. *Rudland*, 4 F. &. F. 495.

Subd. 4. Administering intoxicating, narcotic, or anæsthetic substance.—"The second clause of this subdivision is intended to cover cases where the female is rendered temporarily incapable of giving consent by means of liquor or drugs. In *Regina* v. *Camplin*, 1 Cox C. C. 220; 1 Denio, 89; 1 Car. & Kir. 746, the jury found that the prisoner gave liquor to the female for the purpose of exciting her passions and inducing her consent; it had, however, the effect of rendering her drunk and insensible, in which condition he violated her. This was held to be rape; on the ground that the connection was accomplished without the consent and against the will of the female, which was all that was necessary to constitute the offense. Actual resistance on her part was not necessary to be shown. A number of similar instances of the commission of the offense are referred to in 2 Whart. & Stille's Med. Jur., 3d ed., secs. 245–267. This clause is not limited to cases in which the stupefying drug is administered with intent to facilitate a rape. Cases in which the drug is administered from proper motives, but the accused afterwards avails himself of the helplessness of the subject to commit the offense, are designed to be included. It is indeed doubtful whether, in the case of *Regina* v. *Camplin*, above cited, a conviction would have been sustained independent of the circumstances, upon which some stress is laid by members of the court, that the liquor was given with an unlawful intent, and that the prosecutrix indicated dissent by refusing the prisoner's solicitations as long as she had the power:" Commissioners' note; see *Commonwealth* v. *Burke*, 105 Mass. 376; *People* v. *Stoyell*, 54 Me. 24; *People* v. *Quin*, 50 Barb. 128.

Subd. 5. Unconscious of the nature of the act.—"It can but rarely happen that the subject of the offense consciously submits to the act uncompelled, without being aware of its nature; yet some cases of this sort are reported. In *Regina* v. *Case*, 4 Cox C. C. 220, the defendant was a medical practitioner, and the prosecutrix was a young girl placed under his care for medical treatment. She made no resistance to the connection, owing to a belief, from representations of defendant, that she was submitting to medical treatment for the ailment under which she labored. *Held*, upon an indictment for assault, that the accused was rightly convicted. Her submission to the act, under an impression that it was something necessary to her case, was not such a consent as relieved the defendant from criminal responsibility. Whether it is to be regarded as possible that a connection should be accomplished during the unconsciousness of natural sleep, without arousing the female, is said to be an open question in medical jurisprudence: See Beck's Med. Jur., 7th ed., 117; Taylor's Med. Jur., 5th ed., 654; Whart. & Stille's Med. Jur., 336, secs. 440, 441; Montgomery on Pregnancy, 2d ed., 361; Bundelius, 96, 99. Whether an unlawful connection so accomplished should be deemed, if proved, to amount to rape, has been differently decided by the courts: See *Regina* v. *Sweenie*, 8 Cox C. C. 223; 3 Irvine, 159, in the affirmative; and *Field's Case*, 4 Leigh, 648; *Charles* v. *State*, 11 Ark. 389, in the negative. It was thought best by the commissioners, on a review of the authorities, not to specify this as one of the cases embraced. The danger of giving rise to unjust prosecutions in cases where the sleep was merely simulated is to be weighed against that of the commission of the offense where the sleep is genuine:" Commissioners' note. Mr. Wharton, in the late edition (8th) of his work on criminal law, states the law to be now settled "that an unconscious submission during sleep is rape:" *Regina* v. *Mayers*, 12 Cox C. C. 311; 2 Whart. & Stille's Med. Jur., secs. 246, 264, 275; see *Regina* v. *Lock*, 27 L. T., N. S., 661.

Subd. 6. Submitting under belief that the person is her husband.—"Several cases are to be found in the reports in which a criminal connection has been accomplished by means of personating the husband of the female. In England this is held not to be rape: *Regina* v. *Clarke*, Dears. C. C. 397; 6 Cox C. C. 412; 18 Jur. 1059; 29 Eng. L. & Eq. 542; *Rex* v. *Jackson*, Russ. & Ry. 487; *Regina* v. *Williams*, 8 Car. & P. 286; *Regina* v. *Saunders*, Id. 265; *Regina* v. *Barrow*, 11 Cox C. C. 191; see *Regina* v. *Mayers*, 12 Id. 311; in Scotland it has been held to be rape: *Regina* v. *Sweenie*, 8 Id. 223; *Fraser's Case*. Arkley's Jus. 329. . . . . It is regarded that this offense fully partakes of the guilt of rape, and should share its punishment in all instances in which any means are used by the accused to create a belief that he is the husband:" Commissioners' note. In this country different views have been expressed by different courts, some following the English cases, and others taking a contrary view: See *Lewis* v. *State*, 30 Ala. 54; *Wyatt* v. *State*, 3 Swan, 394; *State* v. *Brooks*, 76 N. C. 1; 2 Bennett & Heard's Lead. Crim. Cas. 255, 257, and cases there cited, where the English rule was adopted. See, as adopting a contrary rule, *State* v. *Shephard*, 7 Conn. 54; 1 Wheel. 381; *Carter* v. *State*, 35 Ga. 263; see *Commonwealth* v. *Fields*, 4 Leigh, 648; *Walter* v. *People*, 50 Barb. 144.

Proof of rape.—A person cannot be convicted in this state of the crime of rape upon the testimony of the prosecutrix, unsustained by facts and circumstances, without the court warning the jury of the danger of a conviction on such testimony: *People* v. *Benson*, 6 Cal. 221. Uncorroborated, the testimony of the prosecutrix that the defendant committed the offense upon her, is insufficient to sustain a verdict of conviction: *People* v. *Hamilton*, 46 Id. 540; *People* v. *Ardaga*, 51 Id. 371. If, on the trial of one indicted for this offense, he introduces testimony to impeach the character of the prosecuting witness for chastity, the prosecution may introduce testimony to support her general character for chastity: *People* v. *Tyler*, 36 Id. 522.

Indictment, when sufficient.—An indictment that charges that the defendant did unlawfully and feloniously have carnal knowledge of a certain female child under ten years of age is sufficient: *People* v. *Mills*, 17 Cal. 276. The age of the person charged need not be averred: *People* v. *Ah Yek*, 29 Id. 575. Charging the offense in the language of the statute is sufficient: *People* v. *Burke*, 34 Id. 661. Words conveying the same meaning may be used: *People* v. *Girr*, 53 Id. 629. An indictment charging rape, and an assault with intent to commit rape, is not demurrable, as charging two offenses: *People* v. *Tyler*, 35 Id. 553. Nor need one charging an assault with intent to commit rape aver that the person assaulted was not the defendant's wife: *People* v. *Estrada*, 53 Id. 600.

The information charged that the accused committed the crime as follows: That he did feloniously and burglariously enter a certain house of one [naming a woman], in which said house she, the said [woman named] did then and there reside, with intent then and there to commit a rape upon the said [woman named]. "Objection was made to the information," says Judge Myrick, "in that it did not state under which set of circumstances specified in this section the act was intended by the defendant to be accomplished. We think the information was sufficient:" *People* v. *Burns*, 63 Cal. 614, citing *People* v. *Shaber*, 32 Id. 36; *People* v. *Girr*, 53 Id. 629.

Assault with intent to commit rape: Sec. 220, and note.

262. *When physical ability must be proved.*

SEC. 262. No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt.

Defendant's capacity to commit rape.—At the common law, a boy under fourteen is conclusively presumed to be incapable of committing a rape: 1 Whart. Crim. L., 8th ed., sec. 551, and cases there cited. In New York and Ohio this presumption is held to be rebuttable: *People* v. *Randolph*, 2 Park. Cr. 174; *Williams* v. *State*, 14 Ohio, 222.

263. *Penetration sufficient.*

SEC. 263. The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sexual penetration, however slight, is sufficient to complete the crime.

264. *Punishment of rape.*

SEC. 264. Rape is punishable by imprisonment in the state prison not less than five years.

Stats. 1855, 105, sec. 1.

265. *Abduction of women.*

SEC. 265. Every person who takes any woman unlawfully, against her will, and by force, menace, or duress compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the state prison not less than two nor more than fourteen years.

Stats. 1856, 131, sec. 1.

266. *Seduction for purpose of prostitution—Procuration.*

SEC. 266. Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill-fame or of assignation, or elsewhere for the purpose of prostitution, or to have illicit carnal connection with any man; and every person who aids or assists in such inveiglement or enticement; and every person who, by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man—is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in a county

jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 429; *took effect July* 1, 1874.]

Abduction for purposes of prostitution.—To constitute the offense of enticing an unmarried female under the age of eighteen into a house of ill-fame for the purpose of prostitution, there must be an intention to reduce the female to a condition of either common prostitution or concubinage: *Slocum* v. *People*, 90 Ill. 274. The kind and extent of seductive arts which will satisfy the law in such case do not depend upon any absolute rule. If the inducements held out do, as a matter of fact, entice such a female into a house of ill-fame or assignation, or elsewhere for the purpose of prostitution, the offense is complete: Id. The enticing away, however, for the purpose of having illicit sexual intercourse with the individual thus soliciting her to accompany him is not sufficient to constitute the offense. It must be an enticing away, with view and for the purpose of placing her in a house of ill-fame, place of assignation, or elsewhere, to become a prostitute in the more full and exact sense of that term. She must be placed there for common and indiscriminate sexual intercourse with men, or she must be enticed away for the purpose of sexual intercourse by others than the party who thus entices her: *People* v. *Roderigas*, 49 Cal. 9; *Commonwealth* v. *Cook*, 12 Met. 93; *Carpenter*, 8 Barb. 603; *State* v. *Stoyell*, 54 Me. 24; *Osborn* v. *State*, 52 Ind. 526. "Previous chaste character," as used in the statute, means actual personal virtue in distinction from a good reputation: *Lyons* v. *State*, 52 Ind. 426; 1 Am. Crim. Rep. 28; *Kenyon* v. *People*, 26 N. Y. 203. Evidence of the general reputation of the female's want of chastity is inadmissible in such case; there must be specific proof of lewdness: *Kenyon* v. *People*, 26 N. Y. 203. A single act of illicit connection may be shown on defendant's behalf, however: *State* v. *Shean*, 32 Iowa, 88; *Lyons* v. *State*, 52 Ind. 426. It is incumbent upon the prosecution to show that such female was of previous chaste character; but such proof need not be by direct evidence, it may be shown *prima facie*, by presumption from other facts: *People* v. *Roderigas*, 49 Cal. 9.

Procures any female, etc.—To procure a female to have illicit carnal connection with any man is the offense of a procurer or procuress—of a pander. The word "procures," as used in the statute, refers to the act of a person who procures the gratification of the passion of lewdness for another. A person who induces a female of previous chaste character to have illicit carnal connection with himself is not one who "procures any female to have illicit carnal connection with any man:" *People* v. *Roderigas*, 49 Cal. 9.

Seduction.—The seduction of a female is not an offense within section 266. Such section refers to one who procures the gratification of the passion of lewdness in another: *People* v. *Roderigas*, 49 Cal. 9. See statute for the punishment of seduction at the end of this chapter. The testimony of medical experts, in a trial for rape, as to the effect of indecent liberties upon the mind of the female, is inadmissible. Such acts are to be classed under the head of solicitation, and distinguish the crime of seduction from that of rape: *People* v. *Royal*, 53 Id. 62.

267. *Abduction.*

SEC. 267. Every person who takes away any female under the age of eighteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison not exceeding five years, and a fine not exceeding one thousand dollars.

"Takes away" a female.—Neither the language nor the intent of the statute requires that the taking should be by force, but both are accomplished if it is accompanied by improper solicitations or inducements: *People* v. *Marshall*, 59 Cal. 386. The girl need not be under the immediate control of her father, for the purpose of this section; if while out under employment she is taken away and placed in a house of prostitution, she is, in contemplation of law, taken from her father: *People* v. *Cook*, 61 Cal. 478. For a case of insufficient taking from the mother, see *People* v. *Murray*, 3 West Coast Rep. 525.

Purpose of prostitution.—Nor is it necessary that there should be express testimony to the fact that the taking was for the purpose of prostitution. Acts are the surest indications of one's purpose: *People* v. *Marshall*, 59 Cal. 386.

An Act to punish seduction.

[Approved March 1, 1872; 1871-2, 184.]

Seduction—Punishment.

SECTION 1. Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill-fame, or of assignation, or elsewhere, for the purpose of prostitution, and every person who aids or assists in such abduction for such purpose, and every person who by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, is punishable by imprisonment in the state prison not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Abduction of girl under eighteen from father, etc.—The gist of this offense is the taking away of the child for the purpose of prostitution, against the will of the person having lawful charge of her. Such taking need not be by force, either actual or constructive; but if the consent of such person is obtained by fraud, the offense is complete: *Regina* v. *Man-*

kletow, 6 Cox C. C. 143; *Regina* v. *Frazer*, 8 Id. 446; *Regina* v. *Hopkins*, Car. & M. 254; *State* v. *Ruhl*, 8 Iowa, 447. The consent of the child is no avail to the prisoner, if she is under age, notwithstanding that he *bona fide* believed, and had reasonable ground for believing, that she was over age: *Regina* v. *Prince*, 1 Am. Crim. Rep. 1; *Regina* v. *Olifier*, 10 Cox C. C. 402; *Regina* v. *Mycock*, 12 Id. 28; *Regina* v. *Booth*, Id. 231. The enticing away must be for the purpose of prostitution, and not merely for the purpose of having illicit intercourse with her by the man who entices her away. There must be an intent to reduce the female to a condition of common prostitution. Thus where a young woman, who lived with her parents, was induced by a man to leave home and meet him for a few hours, and have illicit intercourse with him, within a few rods of her home, after which she returned home, the offense was held not made out, because there was no proof of an intent to reduce her to a condition of common prostitution: *Slocum* v. *People*, 90 Ill. 274; see *People* v. *Roderigas*, 49 Cal. 9; and sec. 266, note.

"Other person having the legal charge of her person."—The following meaning was given to these words by the supreme court of Iowa, in construing a statute similar to section 267: "They do not mean, in our opinion, that such person shall have all the power and authority over the child, possessed by the parent or legally appointed guardian. Nor do they mean a person who has the temporary charge, or a charge for a particular purpose, as a schoolmistress or governess. If otherwise made out, the crime would be complete, if the taking away was without the consent of the person, who, with the permission of the parents, if living, was intrusted with the care, custody, charge or control of the child, as an actual member of the family. If she was temporarily at a relative's house, and he should consent, and the parent not, this would not excuse the person charged. . . . . If the parents are dead, and no guardian has been appointed, those with whom she resided as a member of the family, and who had her wholly under their care and protection, would have the 'legal charge of her person,' within the meaning of the statute:" *State* v. *Ruhl*, 8 Iowa, 447, 452. See Bish. on Stat. Crimes, sec. 633, and cases there cited.

An Act to punish adultery.

[Approved March 15, 1872; 1871-2, 380.]

Adultery—Punishment.

SECTION 1. Every person who lives in a state of open and notorious cohabitation and adultery is guilty of a misdemeanor, and is punishable by a fine not exceeding one thousand dollars, or imprisonment in the county jail not exceeding one year, or by both.

Felony.

SEC. 2. If two persons, each being married to another, live together in a state of open and notorious cohabitation and adultery, each is guilty of a felony, and is punishable by imprisonment in the state prison not exceeding five years.

Proof of marriage.

SEC. 3. A recorded certificate of marriage, or a certified copy thereof, there being no decree of divorce, proves the marriage of a person for the purposes of this act.

Open adultery.—The notoriety is as material in making out the offense made punishable by the above act as the fact of adultery committed: *People* v. *Gates*, 46 Cal. 52. This offense cannot be sustained by proof of a single act of illicit intercourse, or a number of acts. The living together must be open and notorious, as if the relation of husband and wife existed: *Searls* v. *People*, 13 Ill. 597; *Miner* v. *People*, 58 Id. 59; *Richardson* v. *State*, 37 Tex. 346; *Smith* v. *State*, 39 Ala. 554.

CHAPTER II.

ABANDONMENT AND NEGLECT OF CHILDREN.

270. *Omitting to provide child with necessaries.*

SEC. 270. Every parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor.

Indictable omissions: Sec. 26, subd. 6.

Duty of parent to support child: See Civ. Code, secs. 196, 208, 209.

Statutes: See "An act for the protection of children, and to prevent and punish certain wrongs to children," approved March 30, 1878; 1877-8, 812. Also, "An act relating to children," approved March 30, 1878; 1877-8, 813.

271. *Deserting child.*

SEC. 271. Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the state prison not exceeding seven years, or in a county jail not exceeding one year.

272. *Disposing of child for street-begging, mendicant, or wandering business.*

SEC. 272. Any person, whether as parent, relative, guardian, employer, or otherwise, having in his care, custody, or control any child under the age of sixteen years, who shall sell, apprentice, give away, let out, or otherwise dispose of any such child to any person, under any name, title, or pretense, for the vocation, use, occupation, calling, service, or purpose of singing, playing on musical instruments, rope-walking, dancing, begging, or peddling in any public street or highway, or in any mendicant or wandering business whatsoever; and any person who shall take, receive, hire, employ, use, or have in custody any child for such purposes, or either of them, is guilty of a misdemeanor. [*New section, approved March* 3, 1876; *Amendments* 1875-6, 110; *took effect immediately.*]

CHAPTER III.

ABORTIONS.

274. *Administering drugs, etc., with intent to produce miscarriage.*

SEC. 274. Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than two nor more than five years.

Intent to procure abortion bailable offense.—Where the woman dies from the effect of the attempted abortion, and the person attempting to procure it is held for murder, he is entitled to bail: *People* v. *Wolff*, 57 Cal. 94.

Evidence: See sec. 1108, note; *People* v. *Joselyn*, 39 Cal. 393.

Child born alive.—If a person intending to procure abortion does an act which causes a child to be born so much earlier than the natural time that it is born in a state much less capable of living, and afterward dies in consequence of its exposure to the external world, the person who by his misconduct so brings the child into the world and puts it thereby into a situation in which it cannot live is guilty of murder: *Regina* v. *West*, 2 Car. & Kir. 784.

275. *Submitting to an attempt to produce miscarriage.*

SEC. 275. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than one nor more than five years.

The two preceding sections are based upon Stats. 1861, 588, sec. 1.

CHAPTER IV.

CHILD-STEALING.

278. *Definition and punishment of child-stealing.*

SEC. 278. Every person who maliciously, forcibly, or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, is punishable by imprisonment in the state prison not exceeding ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars.

Stats. 1856, 131, sec. 2.

Child-stealing.—An indictment charging the crime of enticing away two children is good under this section: *People* v. *Milne*, 60 Cal. 71.

CHAPTER V.

BIGAMY, INCEST, AND THE CRIME AGAINST NATURE.

281. *Bigamy defined.*

SEC. 281. Every person having a husband or wife living, who marries any other person, except in the cases specified in the next section, is guilty of bigamy.

Marriage, what is.—What constitutes a marriage is left to the operation of the rules of law governing that relation. The definition given in the Civil Code is as follows: "Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by a mutual assumption of marital rights, duties, or obligations:" Sec. 55. It is further enacted that "consent to and subsequent consummation of marriage may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases:" Sec. 57. Also that no lawful marriage is invalidated because not licensed, solemnized, authenticated, and recorded: Sec. 68. By the sections referred to, what were known at common law as consensual marriages are recognized as valid in this state. See also the case of *Graham* v. *Bennet*, 2 Cal. 503.

The indictment or information need not state the place of the first marriage: *People* v. *Giesea*, 61 Cal. 53.

Proof of marriage.—It is generally held that a marriage in fact must be proved, and that mere proof of reputation is not sufficient. In a case in New York, this rule and its limits were carefully considered. In that case, the prosecution to establish the fact of a recent marriage, called a witness who testified in substance that the prisoner conducted her to a house where he had taken rooms. The prisoner went out and returned with a person represented to be a minister. He was dressed like one, and had on a white necktie. She did not ask his name. The marriage ceremony was then performed by this person. He used the form of marriage of the Protestant Episcopal church. He inquired of the witness if she would take the prisoner for her husband, and she replied in the affirmative; and the prisoner was asked if he would have her for his wife, and upon his replying affirmatively the minister declared them man and wife. The person officiating gave her a certificate, using a partly printed form and filling in the blanks by writing. The certificate was taken by the prisoner, and put in his trunk, and was afterwards seen by a sister of the witness, when the parties were living together as man and wife. This marriage ceremony was followed by cohabitation, which continued for about a year. *Held*, that even if to constitute a valid marriage it must be solemnized by a minister or magistrate, the evidence was sufficient, *prima facie*, to prove a marriage in fact. A person appeared in the character of a clergyman, performed the ceremony, and it was followed by cohabitation. If the person officiating was not a clergyman, it was for the prisoner to show that fact. In New York there may be a valid marriage, though not formally solemnized by a clergyman or consent declared before a magistrate. And it was accordingly held that if parties competent to contract, in the presence of witnesses, agree together to be husband and wife, and afterwards cohabit and recognize each other as such, it is a sufficient marriage to sustain an indictment for bigamy in the event of one of the parties having before that time married another, who is still living, and that it was not an error for the judge to instruct the jury that if the prisoner and the witness agreed, in the presence of the man represented to be a minister, to be man and wife, and afterwards lived together as such, that was, in the eye of the law, a sufficient marriage to sustain an indictment for bigamy; the fact that the prisoner had, before that time, married another, and she was then living, being admitted; and that it was of no consequence whether the man represented to be a minister was such or not: *Hayes* v. *People*, 25 N. Y. 390.

282. *Exceptions.*

SEC. 282. The last section does not extend:

1. To any person, by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive years without being known to such person within that time to be living; nor,

2. To any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent court.

Stats. 1861, 415, sec. 121.

283. *Punishment of bigamy.*

SEC. 283. Bigamy is punishable by fine not exceeding two thousand dollars, and by imprisonment in the state prison not exceeding three years.

Stats. 1861, 415, sec. 1.

284. *Marrying a husband or wife of another.*

SEC. 284. Every person who knowingly and willfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the provisions of this chapter, is punishable by fine not less than two thousand dollars, or by imprisonment in the state prison not exceeding three years.

"Stats. 1861, 415, sec. 122, modified. This section, as it existed, applied only to unmarried persons, the idea being, doubtless, that a married person who knowingly marries the husband or wife of another is punishable for the higher offense of bigamy by reason of his or her own previous marriage. But to sustain a prosecution for bigamy, the people must be prepared to prove the first marriage of the accused. A case might arise in which a married person contracting a marriage with a husband or wife of another might escape an indictment for bigamy for want of evidence of an earlier marriage, and yet, if indicted under section 122, quoted *supra*, defeat the prosecution by proof of such earlier marriage; therefore the word "unmarried" was omitted. It may be remarked that by section 654, *post*, it is provided that where an act or omission is made punishable in different ways by different provisions of this code, it may be punished under either of said provisions, but not under more than one; therefore, under the above sections, a person supposed to be married, and charged with marrying the husband or wife of another, may be indicted either for bigamy, under section 281, or for the felony prohibited by section 284, according as it may be easiest to prove the former marriage of the accused or that of the person with whom the accused has now intermarried:" Commissioners' note.

285. *Incest.*

SEC. 285. Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit fornication or adultery with each other, are punishable by imprisonment in the state prison not exceeding ten years.

Incestuous marriages.—"Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate:" Civ. Code, sec. 59.

Person solemnizing incestuous marriage, how punished: Sec. 359, *post*.

286. *Crime against nature.*

SEC. 286. Every person who is guilty of the infamous crime against nature committed with mankind or with any animal is punishable by imprisonment in the state prison not less than five years.

Assault to commit crime against nature: See sec. 220, and note.

287. *Penetration sufficient to complete the crime.*

SEC. 287. Any sexual penetration, however slight, is sufficient to complete the crime against nature.

CHAPTER VI.

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

290. *Unlawful mutilation or removal of dead bodies.*

SEC. 290. Every person who mutilates, disinters, or removes from the place of sepulture the dead body of a human being without authority of law, is guilty of felony. But the provisions of this section do not apply to any person who removes the dead body of a relative or friend for reinterment.

Bodies not to be removed without permit: Pol. Code, sec. 3027.

Indictment sufficient under this section: See *People* v. *Dalton*, 58 Cal. 226.

An Act to protect public health from infection caused by exhumation and removal of the remains of deceased persons.

[Approved April 1, 1878; 1877-8, 1050.]

Disinterring of bodies unlawful without permit.

SECTION 1. It shall be unlawful to disinter or exhume from a grave, vault, or other burial place, the body or remains of any deceased person, unless the person or persons so doing shall first obtain, from the board of health, health-officer, mayor, or other head of the municipal government of the city, town, or city and county where the same are deposited a permit for said

purpose. Nor shall such body or remains disinterred, exhumed, or taken from any grave, vault, or other place of burial or deposit, be removed or transported in or through the streets or highways of any city, town, or city and county, unless the person or persons removing or transporting such body or remains shall first obtain, from the board of health or health-officer (if such board or officer there be), and from the mayor or other head of the municipal government of the city or town, or city and county, a permit, in writing, so to remove or transport such body or remains in and through such streets and highways.

Permits granted upon what.

SEC. 2. Permits to disinter or exhume the bodies or remains of deceased persons, as in the last section, may be granted, provided the person applying therefor shall produce a certificate from the coroner, the physician who attended such deceased person, or other physician in good standing cognizant of the facts, which certificate shall state the cause of death or disease of which the person died, and also the age and sex of such deceased; *and provided further*, that the body or remains of the deceased shall be inclosed in a metallic case or coffin, sealed in such manner as to prevent, as far as practicable, any noxious or offensive order or effluvia escaping therefrom, and that such case or coffin contains the body or remains of but one person, except where infant children of the same parent or parents, or parent and children, are contained in such case or coffin. And the permit shall contain the above conditions and the words: "Permit to remove and transport the body of ——— ———, age ———, sex ———," and the name, age, and sex shall be written therein. The officer of the municipal government of the city or town, or city and county, granting such permit, shall require to be paid for each permit the sum of ten dollars, to be kept as a separate fund by the treasurer, and which shall be used in defraying expenses of and in respect to such permits, and for the inspection of the metallic cases, coffins, and inclosing boxes herein required; and an account of such moneys shall be embraced in the accounts and statements of the treasurer having the custody thereof.

Misdemeanor.

SEC. 3. Any person or persons who shall disinter, exhume, or remove, or cause to be disinterred, exhumed, or removed, from a grave, vault, or other receptacle or burial place, the body or remains of a deceased person, without a permit therefor, shall be guilty of a misdemeanor, and be punished by a fine not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. Nor shall it be lawful to receive such body, bones, or remains on any vehicle, car, barge, boat, ship, steamship, steamboat, or vessel, for transportation in or from this state, unless the permit to transport the same is first received, and is retained in evidence by the owner, driver, agent, superintendent, or master of the vehicle, car, or vessel.

Transportation of bodies exhumed without permit—Misdemeanor.

SEC. 4. Any person or persons who shall move or transport, or cause to be moved or transported, on or through the streets or highways of any city or town, or city and county, of this state, the body or remains of a deceased person, which shall have been disinterred or exhumed without a permit, as described in section two of this act, shall be guilty of a misdemeanor, and be punishable as provided in section three of this act.

Reward for information.

SEC. 5. Any person who shall give information to secure the conviction of any person or persons for the violation of the provisions of this act shall be entitled to receive the sum of twenty-five dollars, to be paid from the fund collected from fines imposed and accruing under this act.

SEC. 6. Nothing in this act contained shall be taken to apply to the removal of the remains of deceased persons from one place of interment to another cemetery or place of interment within the same county; *provided*, that no permit shall be issued for the disinterment or removal of any body unless such body has been buried for two years.

SEC. 7. This act shall take effect and be in force from the thirtieth day after its passage and approval.

Disinterment of bodies.—The act of 1878, above set forth, was brought for the examination of the United States circuit court for the district of California, in *In re Wong Yung Quy*, 6 Saw. 442. The decision upheld the validity of the law. In a carefully prepared opinion, the court summarized the law on the police power of the state in regard to the disposal of the remains of deceased persons in the following plain words: "The matter of the burial and exhumation of the dead, with a view to sanitary objects, has in all times and among all civilized nations been regarded as a proper subject of local regulation. It is founded upon the law of self-protection." This act does not repeal section 290. Both are to be read together, and an indictment which charges the defendant with the crime of "violating sepulture," committed as follows, stating the facts, is sufficient: *People* v. *Dalton*, 58 Cal. 226.

291. *Unlawful removal of dead body from grave for dissection, etc.*

SEC. 291. Every person who removes any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same or to dissect it, without authority of law, or from malice or wantonness, is punishable by imprisonment in the state prison not exceeding five years.

Removal of dead bodies: See the case of *In re Wong Yung Quy*, 6 Saw. 442, cited above.

"This section embraces the removal of a part only of the remains of a deceased person, and the removal of remains while yet unburied. In *Regina* v. *Sharpe*, 40 Eng. L. & Eq. 581, it appeared that the prisoner had, without leave, entered a burying-ground, and without authority from the custodians had disinterred a corpse and removed it. The removal was conducted in a proper manner, the corpse was that of the prisoner's mother, and his motive for the removal was to bury her remains in a church-yard with the body of his father, then recently deceased. *Held*, that the disinterment was a misdemeanor. The mere fact that the defendant acted from praiseworthy motives was no defense. Neither does the English law recognize the right of any one child to the corpse of its parent. It recognized no property in a corpse. Nor will relationship justify the taking of a corpse away from the grave where it has been buried. The section in the text has regard to the motives from which the act is done, and leaves a disinterment to pass without criminal punishment, if the unworthy motives specified in the section are not proved to have actuated the defendant, and if there was nothing in the manner of performing it amounting to an offense under other provisions of the Code:" Commissioners' note.

292. *Who are charged with the duty of burial.*

SEC. 292. The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

1. If the deceased was a married woman, the duty of burial devolves upon her husband;

2. If the deceased was not a married woman, but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age and within this state, and possessed of sufficient means to defray the necessary expenses;

3. If the deceased left no husband nor kindred answering the foregoing description, the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if there is none, then upon the persons charged with the support of the poor in the locality in which the death occurs;

4. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant; or if there is no tenant, upon the owner of the premises or master; or if there is no master, upon the owner of the vessel in which the death occurs or the body is found.

293. *Punishment for omitting to bury.*

SEC. 293. Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omits to perform that duty within a reasonable time, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead treble the expenses incurred by the latter in making the burial, to be recovered in a civil action.

294. *Who are entitled to custody of a body.*

SEC. 294. The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it; except that in the case in which an inquest is required by law to be held upon a dead body by a coroner, such coroner is entitled to its custody until such inquest has been completed.

295. *Arresting or attaching a dead body.*

SEC. 295. Every person who arrests or attaches any dead body of a human being, upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

The commissioners' note, as follows, has peculiar interest: "The four preceding sections are taken from the New York penal code, secs. 352, 353, 354, 359, and were deemed necessary when such notices as the following appeared in our papers: 'A Chinaman, arrested some days since for dumping the dead bodies of his countrywomen on the streets, instead of burying them, pleaded guilty to the offense against the common law:' Sacramento Union, Oct. 11, 1870."

296. *Defacing tombs and monuments.*

SEC. 296. Every person who willfully and maliciously defaces, breaks, destroys, or removes any tomb, monument, or grave-stone, erected to any deceased person, or any memento or memorial, or any ornamental plant, tree, or shrub, appertaining to the place of burial of a human being, or who shall mark, deface, injure, destroy, or remove any fence, post, rail, or wall of any cemetery or grave-yard, is guilty of a misdemeanor.

"The preceding section is based upon section 2 of the act to protect the bodies of deceased persons, etc., Stats. 1854, 20, and an act to protect cemeteries in Nevada county, Stats. 1868, 26, and embraces all the material provisions thereof. See other provisions regarding burial and registering same: Pol. Code Cal., secs. 3074–3082:" Commissioners' note.

297. *Unlawful interments.*

SEC. 297. Every person who shall bury or inter, or cause to be buried or interred, the dead body of any human being, or any human remains, in any place within the corporate limits of any city or town in this state, or within the corporate limits of the city and county of San Francisco, except in a cemetery or place of burial, now existing under the laws of this state, and in which interments have been made, or that is now or may hereafter be established or organized by the board of supervisors of the county, or city and county, in which such city or town, or city and county, is situate, shall be guilty of a misdemeanor. [*New section, approved March* 30, 1874; *Amendments* 1873–4, 458; *took effect from passage.*]

CHAPTER VII.

OF CRIMES AGANST RELIGION AND CONSCIENCE, AND OTHER OFFENSES AGAINST GOOD MORALS.

299. *Barbarous and noisy amusements, and theaters where liquors are sold, prohibited on Sunday.*

Section repealed by the act of February 8, 1883; Statutes and Amendments 1883, 1. The section read as follows: "Sec. 299. Every person who, on the Christian sabbath, gets up, exhibits, opens, or maintains, or aids in getting up, exhibiting, opening, or maintaining, any bull, bear, cock, or prize fight, horse-race, circus, gambling-house, or saloon, or any barbarous and noisy amusement, or who keeps, conducts, or exhibits any theater, melodeon, dance-cellar, or other place of musical, theatrical, or operatic performance, spectacle, or representation where any wines, liquors, or intoxicating drinks are bought, sold, used, drank, or given away, or who purchases any ticket of admission, or directly or indirectly pays any admission fee to or for the purpose of witnessing or attending any such place, amusement, spectacle, performance, or representation, is guilty of a misdemeanor."

Sunday laws.—The legislature may prohibit all persons from keeping open their places of business on Sunday. Such laws are constitutional: *Ex parte Andrews*, 18 Cal. 678; *Ex parte Bird*, 19 Id. 130. A law which prohibits a certain class from carrying on their business on Sunday is special and unconstitutional: *People* v. *Westerfield*, 55 Id. 550.

300. *Keeping open places of business on Sunday.*

Section repealed by the act of February 8, 1883; Statutes and Amendments 1883, 1. The section read as follows: "Sec. 300. Every person who keeps open on Sunday any store, workshop, bar, saloon, banking-house, or other place of business, for the purpose of transacting business therein, is punishable by fine not less than five nor more than fifty dollars."

To the original section the commissioners appended the following note: "Stats. 1861, 655, sec. 1. Contracts made on Sunday were held not to be void in *Moore* v. *Murdock*, 26 Cal. 514, so that unless this section existed, making certain business on Sunday unlawful, contracts in and about it would be binding, though made on Sunday. See also *Ex parte Bird*, 19 Id. 130."

An Act to regulate and provide for a day of rest in certain cases.
[Approved April 16, 1880; 1880, 80 (Ban. ed. 311).]

Bakers' day of rest.

SECTION 1. It shall be unlawful for any person engaged in the business of baking to engage or permit others in his employ to engage in the labor of baking, for the purpose of sale, between the hours of six o'clock P. M. on Saturday and six o'clock P. M. on Sunday, except in the setting of sponge preparatory to the night's work; *provided, however*, that restaurants, hotels, and boarding-houses may do such baking as is necessary for their own consumption.

Misdemeanor—Penalty.

SEC. 2. Any person violating the provisions of this act shall be guilty of a misdemeanor, and shall be punishable by imprisonment in the county jail not less than one month nor more than six months, or by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by both fine and imprisonment.

SEC. 3. This act shall take effect and be in force from and after its passage.

See *Ex parte Westerfield*, 55 Cal. 550.

301. *Limitation on operation of preceding section.*

Section repealed by act of February 8, 1883, Statutes and Amendments 1883, 1. The original section read as follows: "Sec. 301. The provisions of the preceding section do not apply to persons who, on Sunday, keep open hotels, boarding-houses, barber-shops, baths, markets, restaurants, taverns, livery-stables, or retail drug stores, for the legitimate business of each, or such manufacturing establishments as are usually kept in continued operation."

That section was amended in 1880, Stats. 1880, 38, to read as follows: "Sec. 301. The provisions of the preceding section do not apply to persons who, on Sunday, keep open hotels, boarding-houses, barber-shops, baths, markets, restaurants, taverns, livery-stables, or retail drug stores, for the legitimate business of each, or such manufacturing establishments as are usually kept in continued operation; *provided*, that the provisions of the preceding section shall apply to persons keeping open barber-shops, bath-houses, and hair-dressing saloons after 12 o'clock M. on Sunday. [Amendment, approved April 15, 1880; Amendments 1880, 38 (Ban. ed. 252); took effect fifteen days after approval.]

302. *Disturbing religious meetings.*

SEC. 302. Every person who willfully disturbs or disquiets any assemblage of people met for religious worship, by noise, profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor.

303. *Sale of liquors at theaters, and employing women to sell liquors thereat.*

SEC. 303. Every person who sells or furnishes any malt, vinous, or spirituous liquors to any person in the auditorium or lobbies of any theater, melodeon, museum, circus, or caravan, or place where any farce, comedy, tragedy, ballet, opera, or play is being performed, or any exhibition of dancing, juggling, wax-work figures, and the like is being given for public amusement, and every person who employs or procures, or causes to be employed or procured, any female to sell or furnish any malt, vinous, or spirituous liquors at such place, is guilty of a misdemeanor.

Stats. 1863, 252, sec. 3.

See *Ex parte Smith and Keating*, 38 Cal. 702; *Ex parte Maguire*, 57 Id. 604; Const. Cal., sec. 18, art. 22.

Special acts.—Sale of liquors on election days. Act in effect March 7, 1874; Stats. 1873-4, 297. Sale of liquors at state capitol. Act in effect April 16, 1880; Stats. 1880, 273.

304. *Selling liquors at camp-meeting.*

SEC. 304. Every person who erects or keeps a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous or intoxicating liquors, or any drink of which wines, spirituous or intoxicating liquors form a part, or for selling or otherwise disposing of any article of merchandise, or who peddles or hawks about any such drink or article, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, is punishable by fine of not less than five nor more than five hundred dollars.

Stats. 1859, 188, sec. 1.

305. *Limitation of preceding section.*

SEC. 305. The provisions of the preceding section do not apply to any person carrying on a regular business in the sale of liquors or other articles, which business was established prior to the appointment of the meeting referred to in such section.

Stats. 1859, 188, sec. 1.

306. *Procuring female to play on musical instrument or to dance, etc., for hire, in drinking-saloon.*

SEC. 306. Every person who causes, procures, or employs any female for hire, drink, or gain, to play upon any musical instrument, or to dance, promenade, or otherwise exhibit herself, in any drinking-saloon, dance-cellar, ball-room, public garden, public highway, common, park, or street, or in any ship, steamboat, or railroad car, or in any place whatsoever, if in such place there is connected therewith the sale or use, as a beverage, of any intoxicating, spirituous, vinous, or malt liquors; or who shall allow the same in any premises under his control, where intoxicating, spirituous, vinous, or malt liquors are sold or used, when two or more persons are present, is punishable by a fine not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both; and every female so playing upon any musical instrument, or dancing, promenading, or exhibiting herself, as herein aforesaid, is punishable by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding one month, or by both. [*Amendment, approved March* 30, 1874; *Amendments* 1873-4, 460; *took effect sixtieth day after passage.*]

Unconstitutional.—This section is in conflict with section 18, article 20, of the constitution of this state, and is void: *Matter of Maguire*, 57 Cal. 604.

An Act to prevent the sale of intoxicating drinks to minors.

[Approved March 4, 1872; 1871-2, 231.]

Selling or giving child intoxicating drink.

SECTION 1. Every person who sells or gives to another under the age of sixteen years, to be by him drank at the time as a beverage, any intoxicating drink, is guilty of a misdemeanor, and punishable by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months; *provided*, that nothing in this act shall be deemed to apply to parents of such children, or guardians of their wards, or physicians

307. *Prohibiting the sale of opium.*

SEC. 307. Every person who opens or maintains, to be resorted to by other persons, any place where opium, or any of its preparations, is sold or given away, to be smoked at such place; and any person who at such place sells or gives away any opium, or its said preparations, to be there smoked or otherwise used; and every person who visits or resorts to any such place for the purpose of smoking opium, or its said preparations—is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [*New section, approved March* 4, 1881; *Statutes and Amendments* 1881, 34; *took effect immediately.*]

"Stats. 1860, 86, sec. 2; 1863, 253, sec. 3. For a full discussion of the constitutional and other questions incidentally arising under this chapter, see *Ex parte Keating*, 38 Cal. 702 et seq.:" Commissioners' note to the original section.

Section 307 was first amended by act approved March 10, 1874; Amendments 1873-4, 459; took effect sixtieth day from passage, and afterwards repealed by act approved March 30, 1874; Amendments 1873-4, 461; took effect sixtieth day from passage.

Repealed section:

"SEC. 307. Every person who causes, or procures or employs, any female, under the age of seventeen years, to dance, promenade, or otherwise exhibit herself for hire, drink, or gain, in any drinking-saloon, dance-cellar, ball-room,

public garden, public highway, or in any place whatsoever (theaters excepted), where two or more persons are assembled together, is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both; and every female under the age of seventeen years so dancing, promenading, or exhibiting herself is punishable by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding one month, or by both."

The amendment of March 10, 1874, above referred to, did not have the words "under the age of seventeen years," and instead of "whatsoever (theaters excepted), where two or more persons are assembled together," it had the words "of a similar or immoral character."

308.

There is no section of this number.

309. *To prevent admission of minors to houses of prostitution*

SEC. 309. Any proprietor, keeper, manager, conductor, or person having the control of any house of prostitution, or any house or room resorted to for the purpose of prostitution, who shall admit or keep any minor of either sex therein; or any parent or guardian of any such minor, who shall admit or keep such minor, or sanction or connive at the admission or keeping thereof, into or in any such house or room—shall be guilty of a misdemeanor. [*New section, approved April* 12, 1880; *Amendments* 1880, 35 (*Ban. ed.* 202); *took effect immediately.*]

An Act for the protection of children, and to prevent and punish certain wrongs to children.

[Approved March 30, 1878; 1877-8, 812.]

Minor not to enter saloon—Penalty.

SECTION 1. No minor, under the age of sixteen years, shall be admitted at any time to, or permitted to remain in, any saloon or place of entertainment where any spirituous liquors, or wines, or intoxicating or malt liquors are sold, exchanged, or given away, or at places of amusement known as dance-houses and concert-saloons, unless accompanied by parent or guardian. Any proprietor, keeper, or manager of any such place who shall admit such minor to, or permit him or her to remain in, any such place, unless accompanied by parent or guardian, shall be guilty of a misdemeanor.

Begging restrained—Penalty for violation.

SEC. 2. Every person having the care, custody, or control of any child under the age of sixteen years shall restrain such child from begging, whether actually begging or under the pretext of peddling. Any person offending against this section shall be arrested and brought before a court or magistrate, and for the first offense shall be reprimanded, and for each subsequent offense shall be guilty of a misdemeanor.

Penalty for begging.

SEC. 3. Any child, apparently under the age of sixteen years, that comes within any of the following descriptions named:

1. That is found begging, or receiving or gathering alms (whether actually begging, or under the pretext of selling or offering for sale anything), or being in any street, road, or public place for the purpose of so begging, gathering, or receiving alms;
2. That is found wandering and not having any house or settled place of abode, or proper guardianship, or visible means of subsistence;
3. That is found destitute, either being an orphan, or having a vicious parent who is undergoing penal servitude or imprisonment;
4. That frequents the company of reputed thieves or prostitutes, or houses of prostitution or assignation, or dance-houses, concert-saloons, theaters, and varieties, or places specified in the first section of this act, without parent or guardian, shall be arrested, and brought before a court or magistrate;

—When, upon examination before a court or magistrate, it shall appear that any such child has been engaged in any of the aforesaid acts, or comes within any of the aforesaid descriptions, such court or magistrate, when it shall deem it expedient for the welfare of the child, may commit such child to an orphan asylum, society for the prevention of cruelty to children, charitable or other institution, or make such other disposition thereof as now is or may hereafter be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children.

Child not to be confined.

SEC. 4. No child under restraint or conviction, apparently under the age of sixteen years, shall be placed in any prison or place of confinement, or in any court-room, or in any vehicle for transportation to any place, in company with adults charged with or convicted of crime, except in the presence of a proper official.

SEC. 5. This act shall take effect immediately.

An Act relating to children.

[Approved March 30, 1878; 1877-8, 813.]

Persons selling or apprenticing children for immoral purpose.

SECTION 1. Any person, whether as parent, relative, guardian, employer, or otherwise, having the care, custody, or control of any child under the age of sixteen years, who shall exhibit, use,

or employ, or who shall in any manner or under any pretense sell, apprentice, give away, let out, or otherwise dispose of any such child to any person, under any name, title, or pretense, in or for the vocation, occupation, service, or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging, or peddling, or as a gymnast, acrobat, contortionist, or rider, in any place whatsoever, or for or in any obscene, indecent, or immoral purpose, exhibition, or practice whatsoever, or for or in any mendicant or wandering business whatsoever, or for or in any business, exhibition, or vocation injurious to the health or dangerous to the life or limb of such child; or who shall cause, procure, or encourage any such child to engage therein—shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty nor more than two hundred and fifty dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment; *provided*, that nothing in this section contained shall apply to or affect the employment or use of any such child as a singer or musician in any church, school, or academy, or the teaching or learning of the science or practice of music; or the employment of any such child as a musician at any concert or other musical entertainment, on the written consent of the mayor of the city or president of the board of trustees of the town where such concert or entertainment shall take place,

Offense, how punished.

SEC. 2. Every person who shall take, receive, hire, employ, use, exhibit, or have in custody any child under the age and for any of the purposes mentioned in the preceding section, shall be guilty of a like offense, and punished by a like punishment as therein provided.

Court to commit child to asylum.

SEC. 3. When, upon examination before any court or magistrate, it shall appear that any child, within the age previously mentioned in this act, was engaged or used for or in any business, or exhibition, or vocation, or purpose designated, and as mentioned in this act, and when, upon the conviction of any person having the custody of a child of a criminal assault upon it, the court or magistrate before whom such conviction is had shall deem it desirable for the welfare of such child that the person so convicted should be deprived of its custody thereafter, such court or magistrate may commit such child to any orphan asylum, society for the prevention of cruelty to child, charitable or other institution, or make such other disposition thereof as now is or hereafter may be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children.

Causing child to suffer—Penalty for.

SEC. 4. Whoever shall willfully cause or permit any child to suffer, or who shall inflict thereon unjustifiable physical pain or mental suffering, and whoever, having the care or custody of any child, shall willfully cause or permit the life or limb of such child to be endangered, or the health of such child to be injured, or any person who shall willfully cause or permit such child to be placed in such a situation that its life or limb may be endangered, or its health shall be likely to be injured, shall be guilty of a misdemeanor.

Fines, how appropriated.

SEC. 5. All fines, penalties, and forfeitures imposed and collected in any county of this state, under the provisions of this and every act passed, or which may be passed, relating to or affecting children, in every case where the prosecution was instituted or conducted by a society incorporated pursuant to the provisions of chapter five hundred and forty-nine of the statutes of 1875–6, approved April third, eighteen hundred and seventy-six, being an act entitled "An act for the incorporation of societies for the prevention of cruelty to children," shall, except where otherwise provided, inure to such society in aid of the purposes for which it was incorporated.

SEC. 6. This act shall take effect immediately.

CHAPTER VIII.

INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS, AND PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES.

311. *Indecent exposures, exhibitions, and pictures.*

SEC. 311. Every person who willfully and lewdly either:

1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels, or assists any person so to expose himself, or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts; or,

3. Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, or book; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or molds. cuts, casts, or otherwise makes any obscene or indecent figure; or,

4. Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print, or figure; or,

5. Sings any lewd or obscene song, ballad, or other words, in any public place, or in any place where there are persons present to be annoyed thereby; —Is guilty of a misdemeanor. [*Amendment, approved March* 30, 1874; *Amendments* 1873-4, 429; *took effect July* 1, 1874.]

"This and the three succeeding sections are based upon an act relative to obscene and lewd publications, Stats. 1859, 297, and an act relative to injurious publications, Stats. 1858, 204, extended to embrace cases not included within those acts, but which deserve like punishments, and follow the language of the New York penal code, secs. 363, 365, 366:" Commissioners' note.

The amendment omitted for subdivision 4, the clause "or any notice or advertisement for producing or facilitating a miscarriage." Such an offense is made a felony in section 317.

Public indecency.—By the common law, any grossly scandalous and public indecency was indictable, and punishable by fine and imprisonment: 4 Bla. Com. 41. The common law is the guardian of the morals of the people, and their protection against offenses notoriously against public decency and good morals: *Grisham* v. *State*, 2 Yerg. 588. The singing in public of obscene songs, or like indecency in words, is punishable: *Bell* v. *State*, 1 Swan, 42; *State* v. *Appling*, 25 Mo. 315. But see the case of *McJunkins* v. *State*, 10 Ind. 140.

See, generally, *Commonwealth* v. *Holmes*, 17 Mass. 336; *Commonwealth* v. *Sharpless*, 2 Serg. & R. 91; *State* v. *Millard*, 18 Vt. 574; *Regina* v. *Watson*, 2 Cox C. C. 376; *Regina* v. *Webb*, 3 Id. 183; *Regina* v. *Orchard*, Id. 248.

312. *Seizure of indecent articles authorized.*

SEC. 312. Every person who is authorized or enjoined to arrest any person for a violation of subdivision three of the last section is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print, or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

313. *Their character to be summarily determined.*

SEC. 313. The magistrate to whom any obscene or indecent writing, paper, book, picture, print, or figure is delivered, pursuant to the foregoing section, must, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print, or figure, and if he finds it to be obscene or indecent he must deliver one copy to the district attorney of the county in which the accused is liable to indictment or trial, and must at once destroy all the other copies.

314. *Their destruction.*

SEC. 314. Upon the conviction of the accused, such district attorney must cause any writing, paper, book, picture, print, or figure, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed.

315. *Keeping or residing in a house of ill-fame.*

SEC. 315. Every person who keeps a house of ill-fame in this state, resorted to for the purposes of prostitution or lewdness, or who willfully resides in such house, is guilty of a misdemeanor.

Stats. 1855, 76, sec. 1

A house of ill-fame is defined to be a bawdy-house, a house kept for the resort and convenience of lewd people of both sexes. The residence of an unchaste woman—a single prostitute—does not become a house of ill-fame because she may habitually admit one or many men to an illicit cohabitation with her: *State* v. *Evans*, 5 Ired. L. 603.

316. *Keeping disorderly houses.*

SEC. 316. Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitu-

ally disturbed, or who keeps any inn in a disorderly manner; and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 430; *took effect July* 1, 1874.]

Disorderly house.—A house kept for the meeting of men and women for illegal and obscene purposes, or for the purpose of enticing young girls there for debauchery, is a disorderly house: *United States* v. *Gray*, 2 Cranch C. Ct. 675. So is a house where common gaming is carried on for lucre and gain: *United States* v. *Milburn*, 4 Id. 719. And a house where rum is habitually sold on Sundays: *State* v. *Williams*, 30 N. J. L. 102. But a ten-pin alley is not *per se* a disorderly house: *State* v. *Hall*, 32 Id. 158.

317. *Writing or publishing notices of means to procure abortion or miscarriage.*

SEC. 317. Every person who willfully writes, composes, or publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purpose, is guilty of a felony. [*New section, approved March* 30, 1874; *Amendments* 1873–4, 430; *took effect July* 1, 1874.

318. *Prevailing upon person to visit place kept for gambling or prostitution, misdemeanor.*

SEC. 318. Whoever, through invitation or device, prevails upon any person to visit any room, building, or other places kept for the purpose of gambling or prostitution is guilty of a misdemeanor, and upon conviction thereof shall be confined in the county jail not exceeding six months, or fined not exceeding five hundred dollars, or be punished by both such fine and imprisonment. [*New section, approved April* 16, 1880; *Amendments* 1880, 40 (*Ban. ed.* 336); *took effect from passage.*]

CHAPTER IX.

LOTTERIES.

319. *Lottery defined.*

SEC. 319. A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known.

"**This and the succeeding sections** relating to lotteries are founded upon an act to prohibit lotteries, etc.: Stats. 1861, 229. No material changes in the legal effect have been made; but the law follows the language of the New York penal code, having in view greater terseness of expression: *Governor of Almshouse* v. *American Art Union*, 7 N. Y. 228; Bouv. Law Dict., tit. Lottery; Mass. Gen. Stats., 823, sec. 1. In the popular use of the abovementioned terms, a lottery is a distribution by chance of several prizes among purchasers of separate chances; a raffle is a disposal by chance of a single prize among purchasers of separate chances; and a gift enterprise is a disposal of property in mass to a body of shareholders, upon an understanding or expectation that they will decide it among themselves by chance. But as all schemes of this description are involved in a common condemnation and punishment, to retain these distinctions in the statute-book would serve no important purpose in defining the offense, while it would embarrass prosecutions by suggesting questions as to the requisite averments in the indictment. The law has, therefore, defined the word "lottery" broad enough to cover all these homogeneous devices, in order that that word may be intelligibly used as including all:" Commissioners' note.

Lotteries.—Bouvier defines a lottery to be "a scheme for the distribution of prizes by lot or chance:" Bouv. Law Dict., tit. Lottery. See *United States* v. *Olney*, Deady, 461, for different definitions of this term. Any gift enterprise or raffle in which the public is invited to take shares for the distribution of prizes by chance is a lottery: *State* v. *Clarke*, 33 N. H. 329; *Commonwealth* v. *Thacher*, 97 Mass. 583; *State* v. *Shorts*, 32 N. J. L. 398; *Hull* v. *Ruggles*, 56 N. Y. 424; *Governor etc.* v. *American Art Union*, 7 N. Y. 228; *Dunn* v.

People, 40 Ill. 465. The fact that there are no blanks in the enterprise makes it none the less a lottery: *Wooden* v. *Shotwell*, 23 N. J. L. 465; *Randle* v. *State*, 42 Tex. 580. The mere determination of questions by lot, when there is no distribution of prizes by chance, does not constitute a lottery: *Commonwealth* v. *Manderfield*, 8 Phila. 457. Section 26 of article 4 of the state constitution provides that "the legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale in this state of lottery or gift-enterprise tickets, or tickets in any scheme in the nature of a lottery." See *Ex parte Blanchard*, 9 Nev. 101, construing a similar provision in the constitution of Nevada. In *Ex parte Smith*, 40 Cal. 419, an act passed February 19, 1870, to aid the Mercantile Library Association, was held not to repeal the general law prohibiting lotteries. See *People* v. *Kent*, 6 Id. 89, as to the meaning of the expression "drawing a prize," as connected with lotteries. In 2 Whart. Crim. L., 8th ed., sec. 1493 et seq., and 2 Archb. Crim. Pl. 1775, 1776, the requisites of an indictment charging this offense, as well as the evidence necessary to support it, are considered at length.

320. *Punishment for drawing lottery.*

SEC. 320. Every person who contrives, prepares, sets up, proposes, or draws any lottery is guilty of a misdemeanor.

321. *Punishment for selling lottery-tickets.*

SEC. 321. Every person who sells, gives, or in any manner whatever furnishes or transfers to or for any other person any ticket, chance, share, or interest, or any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in or depending upon the event of any lottery, is guilty of a misdemeanor.

322. *Aiding lotteries.*

SEC. 322. Every person who aids or assists, either by printing, writing, advertising, publishing, or otherwise in setting up, managing, or drawing any lottery, or in selling or disposing of any ticket, chance, or share therein, is guilty of a misdemeanor.

323. *Lottery offices—Advertising lottery offices.*

SEC. 323. Every person who opens, sets up, or keeps, by himself or by any other person, any office or other place for the sale of, or for registering the number of, any ticket in any lottery, or who, by printing, writing, or otherwise, advertises or publishes the setting up, opening, or using of any such office, is guilty of a misdemeanor.

324. *Insuring lottery-tickets.*

SEC. 324. Every person who insures or receives any consideration for insuring for or against the drawing of any ticket in any lottery whatever, whether drawn or to be drawn within this state or not, or who receives any valuable consideration upon any agreement to repay any sum, or deliver the same, or any other property, if any lottery-ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not be drawn, at any particular time or in any particular order, or who promises or agrees to pay any sum of money, or to deliver any goods, things in action, or property, or to forbear to do anything for the benefit of any person, with or without consideration, upon any event or contingency dependent on the drawing of any ticket in any lottery, or who publishes any notice or proposal of any of the purposes aforesaid, is guilty of a misdemeanor.

325. *Property offered for disposal in lottery forfeited.*

SEC. 325. All moneys and property offered for sale or distribution in violation of any of the provisions of this chapter are forfeited to the state, and may be recovered by information filed, or by an action brought by the attorney-general, or by any district attorney, in the name of the state. Upon the filing of the information or complaint, the clerk of the court, or if the suit be in a justice's

court, the justice, must issue an attachment against the property mentioned in the complaint or information, which attachment has the same force and effect against such property, and is issued in the same manner, as attachments issued from the district courts in civil cases.

326. *Letting building for lottery purposes.*

SEC. 326. Every person who lets, or permits to be used, any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing, or drawing any lottery, or for the purpose of selling or disposing of lottery-tickets, is guilty of a misdemeanor.

CHAPTER X.

GAMING.

330. *Gaming prohibited.*

SEC. 330. Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, stud-horse poker, seven and a half, twenty-one, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or any other representative of value, is punishable by fine of not less than two hundred nor more than one thousand dollars, and shall be imprisoned in the county jail until such fine and costs of prosecution are paid, such imprisonment not to exceed one year; and every person who plays or bets at or against any of said prohibited game or games is guilty of a misdemeanor. [*Amendment, approved March* 14, 1885; *Statutes and Amendments* 1885, 135.]

Gaming.—At the common law, the playing at cards, dice, etc., when practiced innocently, and as a recreation, is not unlawful, nor punishable as any offense whatsoever: Bac. Abr., tit. Gaming; 2 Archb. Crim. Pl. 1788; but see *Bryant* v. *Mead*, 1 Cal. 441. In most of the states statutes have been adopted for the suppression of gambling, as being detrimental to the public good: See Stats. 1857, 267; Id. 1863, 723. Under the former act, which was substantially the same as section 330, an indictment charging the defendant with dealing the game of monte and playing for money was held sufficient: *People* v. *Saviers*, 14 Cal. 29. In *People* v. *Beatty*, Id. 566, that act was held constitutional. See *People* v. *Markham*, 7 Id. 208. Licensing gambling-houses simply protects the party against a criminal prosecution; it does not give him a right to sue for a gaming debt: *Bryant* v. *Mead*, 1 Id. 444; *Carrier* v. *Brannan*, 3 Id. 328; see *Poorman* v. *Mills*, 39 Id. 345. In *People* v. *Craycroft*, 2 Id. 243, and *People* v. *Raynes*, 3 Id. 366, it was held that a failure to take out a license to conduct a gambling-house did not render such person liable in a civil action for the amount of the license, but that the only remedy was to proceed against him by indictment for carrying on an unlawful business. A writ of attachment will not lie in an action to recover from the defendants money which the plaintiffs intrusted to their clerk, and which the defendants won from him at gambling: *Babcock* v. *Briggs*, 52 Id. 502. Betting at a banking game, such as faro, is not playing it, within the meaning of this section. A person who simply bets at such game is not guilty of playing or carrying on such game: *Ex parte Ah Yem*, 53 Id. 246; *State* v. *Carr*, 6 Or. 133; *State* v. *Gett Lee*, Id. 425; *Trimble* v. *State*, 27 Ark. 355; *State* v. *Melville*, 11 R. I. 417. Throwing dice for the whisky is gaming, within the Kentucky statute: *McDaniel* v. *Commonwealth*, 6 Bush, 326.

Tan.—Erroneous instruction in case of information charging defendants with playing tan: *People* v. *Ah Oon*, 56 Cal. 189.

Imprisonment until fine is paid at the rate of a dollar a day cannot be adjudged under this section. The convicted person must either pay in money or serve out the term of imprisonment imposed: *Ex parte Harrison*, 63 Cal. 299.

Visiting gambling-houses.—An ordinance of the city and county of San Francisco punishing the visiting of gambling-house is not in conflict with the above section or with the constitution of the state, and will support a judgment of conviction: *Ex parte Chin Yan*, 60 Cal. 78.

331. *Permitting gambling in houses owned or rented.*

SEC. 331. Every person who knowingly permits any of the games mentioned in the preceding section to be played, conducted, or dealt in any house owned or rented by such person, in whole or in part, is punishable as provided in the preceding section.

"Stats. 1860, 69, sec. 4. Under a former act, the owner of a house used for gaming purposes was not liable for fine imposed for gaming; owner, however, liable where gaming is done with his knowledge, both under the former act and the text: *People* v. *Markham*, 7 Cal. 208. The former act of 1857 is not materially different from the text or the act of 1860:" Commissioners' note.

332. *Winning at play by fraudulent means.*

SEC. 332. Every person who by the game of "three-card monte," so called, or any other game, device, sleight-of-hand, pretensions to fortune-telling, trick, or other means whatever, by use of cards or other implements or instruments, or while betting on sides or hands of any such play or game, fraudulently obtains from another person money or property of any description, shall be punished as in case of larceny of property of like value. [*Amendment, approved April* 16, 1880; *Amendments* 1880, 40 (*Ban. ed.* 339); *took effect immediately.*]

333. *Witnesses neglecting or refusing to attend trial.*

SEC. 333. Every person duly summoned as a witness for the prosecution, on any proceedings had under this chapter, who neglects or refuses to attend, as required, is guilty of a misdemeanor.

334. *Witness's privilege.*

SEC. 334. No person, otherwise competent as a witness, is disqualified from testifying as such concerning the offense of gaming, on the ground that such testimony may criminate himself; but no prosecution can afterwards be had against him for any offense concerning which he testified.

335. *Duties of district attorneys, sheriffs, and others.*

SEC. 335. Every district attorney, sheriff, constable, or police officer must inform against and diligently prosecute persons whom they have reasonable cause to believe offenders against the provisions of this chapter, and every such officer refusing or neglecting so to do is guilty of a misdemeanor.

"Stats. 1863, 723, sec. 1. This chapter is founded on the statute of 1860, p. 69, and the statute of 1863, p. 723. The language has been modified:" Commissioners' note.

336. *Owner or lessee of drinking-place permitting minors to play at game of chance.*

SEC. 336. Every owner or lessee or keeper of any house used in whole or in part as a saloon or drinking place, who knowingly permits any person under twenty-one years of age to play at any game of chance therein, is guilty of a misdemeanor. [*New section, approved March* 24, 1874; *Amendments* 1873–4, 461; *took effect sixtieth day after passage.*]

337. *Aiding or licensing gaming.*

SEC. 337. Every state, county, city, city and county, town, or township officer, or other person who shall ask for, receive, or collect any money, or other valuable consideration, either for his own or the public use, for and with the understanding that he will aid, exempt, or otherwise assist any person from arrest or conviction for a violation of section three hundred and thirty of the Penal Code; or who shall issue, deliver, or cause to be given or delivered, to any person or persons any license, permit, or other privilege, giving, or pretending to give, any authority or right to any person or persons to carry on, conduct, open, or cause to be opened, any game or games which are forbidden or prohibited by section three hundred and thirty of said code; and any of such officer or officers who shall vote for the passage of any ordinance or by-law giving, granting, or pretending to give or grant, to any person or persons

any authority or privilege to open, carry on, conduct, or cause to be opened, carried on, or conducted, any game or games prohibited by said section three hundred and thirty of the Penal Code—is guilty of a felony. [*New section, approved March* 12, 1885; *Statutes and Amendments* 1885, 113.]

CHAPTER XI.

PAWNBROKERS.

338. *Pawnbroking without license.*

SEC. 338. Every person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at any rate of interest above the rate of ten per cent per annum, except by authority of a license, is guilty of a misdemeanor.

339. *Failing to keep a register.*

SEC. 339. Every person who carries on the business of a pawnbroker, who fails at the time of the transaction to enter in a register kept by him for that purpose, in the English language, the date, duration, amount, and rate of interest of every loan made by him, or an accurate description of the property pledged, or the name and residence of the pledgor, or to deliver to the pledgor a written copy of such entry, or to keep an account in writing of all sales made by him, is guilty of a misdemeanor.

340. *Pawnbrokers, what interest may charge.*

SEC. 340. Every pawnbroker who charges or receives interest at the rate of more than two per cent per month, or who by charging commissions, discount, storage, or other charge, or by compounding increases, or attempts to increase, such interest, is guilty of a misdemeanor. [*Amendment, approved March* 7, 1881; *Statutes and Amendments* 1881, 75; *took effect immediately.*]

This section is constitutional, and the amendment of 1881 is not in conflict with the constitutional prohibition against local or special laws regulating the rate of interest on money: *Ex parte Lichtenstein*, 7 West Coast Rep. 287.

341. *Selling before time of redemption has expired, or without notice.*

SEC. 341. Every pawnbroker who sells any article pledged to him and unredeemed, until it has remained in his possession six months after the last day fixed by contract for redemption, or who makes any sale without publishing in a newspaper printed in the city, town, or county, at least five days before such sale, a notice containing a list of the articles to be sold, and specifying the time and place of sale, is guilty of a misdemeanor.

Limiting the interest which may be charged by pawnbrokers is not repugnant to section 11, article 1, of the constitution of this state: *Jackson* v. *Shawl*, 29 Cal. 267.

342. *Refusing to disclose particulars of sale.*

SEC. 342. Every pawnbroker who willfully refuses to disclose to the pledgor or his agent the name of the purchaser and the price received by him for any article received by him in pledge and subsequently sold, or who, after deducting from the proceeds of any sale the amount of the loan and interest due thereon, and four per cent on the loan for expenses of sale, refuses, on demand, to pay the balance to the pledgor or his agent, is guilty of a misdemeanor.

343. *Refusing to allow an officer with search-warrant to inspect register of pledged articles.*

SEC. 343. Every pawnbroker who fails, refuses, or neglects to produce for inspection his register, or to exhibit all articles received by him in pledge, or

his account of sales, to any officer holding a warrant authorizing him to search for personal property, or the order of a committing magistrate directing such officer to inspect such register, or examine such articles or account of sales, is guilty of a misdemeanor.

"The six preceding sections are based on the provisions of the act of April 17, 1861, relating to pawnbrokers: Stats. 1861, 184. Sections 339, 342, 343, are applicable to junk-dealers: See sec. 502, *post*:" Commissioners' note.

CHAPTER XII.

OTHER INJURIES TO PERSONS.

346. *Acts of intoxicated physicians.*

SEC. 346. Every physician who, in a state of intoxication, does any act as such physician to another person by which the life of such other person is endangered is guilty of a misdemeanor.

347. *Willfully poisoning food, medicine, or water.*

SEC. 347. Every person who willfully mingles any poison with any food, drink, or medicine, with intent that the same shall be taken by any human being, to his injury, and every person who willfully poisons any spring, well, or reservoir of water, is punishable by imprisonment in the state prison for a term not less than one nor more than ten years.

348. *Mismanagement of steamboats a felony.*

SEC. 348. Every captain or other person having charge of any steamboat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, or any apparatus or machinery connected therewith, by which bursting or breaking human life is endangered, is guilty of a felony. [*Amendment, approved March* 30, 1874; *Amendments* 1873-4, 431; *took effect July* 1, 1874.]

349. *Mismanagement of steam-boiler a felony.*

SEC. 349. Every engineer or other person having charge of any steam-boiler, steam-engine, or other apparatus for generating or employing steam, used in any manufactory, railway, or other mechanical works, who willfully or from ignorance, or gross neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler or engine, or apparatus, or cause any other accident whereby human life is endangered, is guilty of a felony. [*Amendment, approved March* 30, 1874; *Amendments* 1873-4, 431; *took effect July* 1, 1874.]

350. *Counterfeiting trade-marks.*

SEC. 350. Every person who willfully forges or counterfeits, or procures to be forged or counterfeited, any trade-mark usually affixed by any person to his goods, which has been duly recorded in the office of the secretary of state, with intent to pass off any goods to which such forged or counterfeited trade-mark is affixed, or intended to be affixed, as the goods of such person, is guilty of a misdemeanor. [*Amendment, approved March* 10, 1885; *Statutes and Amendments* 1885, 57.]

"This and the three succeeding sections are based upon the act of March 3, 1853: Stats. 1853, 33. Their object is the protection of the purchaser as well as the manufacturer, and for this reason include within their scope everything that falls within the broadest definition of 'trade-mark.' The remaining sections of this chapter, relative to trade-marks, are

based upon the act of April 3, 1863, Stats. 1863, 155, and are limited in their operation to the statutory trade-marks, etc.: N. Y. Pen. Code, secs. 410, 412. The subject of the text in this section is becoming yearly more and more important. It is similar in import to the New York statutes, Laws 1862, c. 306, sec. 1, the phraseology being rendered more concise, and the punishment being reduced from an imprisonment not less than six months and not more than twelve, or a fine not exceeding five thousand dollars, to that of a misdemeanor. The subject of counterfeiting trade-marks, including the kindred topic of refilling and selling stamped mineral-water bottles, has received the careful attention of the New York legislature. In 1845 an act was passed, Laws 1845, c. 279, punishing the forgery of stamps or labels. In 1850 the provisions of this act were somewhat enlarged. In 1862 both these acts were repealed, and a more comprehensive and stringent statute was passed, Laws 1862, c. 306, which, with an amendment enacted in 1863, Laws 1863, c. 209, giving the party aggrieved a civil remedy in addition to the fine and imprisonment prescribed by the act of 1862, embodies the law existing at the present time, upon the general subject of counterfeiting trade-marks. Such is the history of New York legislation on this subject. Our state is not as yet fully launched on the sea of manufactories, but it is time the subject of their protection should be encouraged in so far as the advantages of trade-marks are concerned. The kindred offense of selling mineral waters, water bottles, and others bearing the stamp of a particular manufacturer, is made punishable by section 354, *post*, of this chapter. The text of this chapter is carefully drawn, retrenching the phraseology and modifying the measure of punishment to correspond with the forms of expression used and penalties prescribed throughout the code, adopting some of the provisions of a very stringent English statute on this subject, passed in 1862, the 25 & 26 Vict., c. 88. See 'Trade-marks,' Civil Code, secs. 655, 991, and notes; Pol. Code, secs. 3196–3199, and notes:" Commissioners' note.

351. *Selling goods which bear counterfeit trade-marks.*

SEC. 351. Every person who sells, or keeps for sale, any goods upon or to which any counterfeited trade-mark has been affixed, after such trade-mark has been recorded in the office of the secretary of state, intending to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor. [*Amendment, approved March* 10, 1885; *Statutes and Amendments* 1885, 57.]

Genuineness of trade-mark warranted by sale of article bearing it: Civ. Code, sec. 1772.

352. *Definition of the phrase "counterfeited trade-marks," etc.*

SEC. 352. The phrases "forged trade-mark" and "counterfeited trade-mark," or their equivalents, as used in this chapter, include every alteration or imitation of any trade-mark so resembling the original as to be likely to deceive.

353. *Trade-mark defined.*

SEC. 353. The phrase "trade-mark," as used in the three preceding sections, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description.

354. *Refilling casks, etc., bearing trade-mark.*

SEC. 354. Every person who has or uses any cask, bottle, vessel, case, cover, label, or other thing bearing or having in any way connected with it the duly filed trade-mark or name of another, for the purpose of disposing, with intent to deceive or defraud, of any article other than that which such cask, bottle, vessel, case, cover, label, or other thing originally contained, or was connected with, by the owner of such trade-mark or name, is guilty of a misdemeanor.

355. *Defacing marks upon wrecked property, and destroying bills of lading.*

SEC. 355. Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof, with intent to prevent the owner from discovering its identity, or who destroys or suppresses

any invoice, bill of lading, or other document tending to show the ownership, is guilty of a misdemeanor.

Wrecks and wrecked property: Pol. Code, secs. 2403 et seq.

356. *Defacing marks upon logs, lumber, or wood.*

SEC. 356. Every person who cuts out, alters, or defaces any mark made upon any log, lumber, or wood, or puts a false mark thereon with intent to prevent the owner from discovering its identity, is guilty of a misdemeanor.

Floating lumber: Pol. Code, secs. 2389 et seq.

357. *Altering brands.*

SEC. 357. Every person who marks or brands, alters or defaces the mark or brand of any horse, mare, colt, jack, jennet, mule, bull, ox, steer, cow, calf, sheep, goat, hog, shoat, or pig belonging to another, with intent thereby to steal the same or to prevent identification thereof by the true owner, is punishable by imprisonment in the state prison for not less than one nor more than five years.

Marks and brands: See Pol. Code, secs. 3167-3172, 3182-3185.

358. *Frauds in affairs of special partnerships.*

SEC. 358. Every member of a special partnership who commits any fraud in the affairs of the partnership is guilty of a misdemeanor.

Special partnership: See Civ. Code, secs. 2477 et seq.

359. *Contracting or solemnizing incestuous or forbidden marriages.*

SEC. 359. Every person authorized to solemnize marriage, who willfully and knowingly solemnizes any incestuous or other marriage forbidden by law, is punishable by fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than one year, or by both.

Incestuous marriage defined: Civ. Code, sec. 59.
Punishment of parties to incestuous marriage: Sec. 285, *ante*
Person authorized to solemnize marriage: Civ. Code, sec. 70.

360. *Making false return or record of marriage.*

SEC. 360. Every person authorized to solemnize any marriage who willfully makes a false return of any marriage or pretended marriage to the recorder, and every person who willfully makes a false record of any marriage return, is punishable as provided in the preceding section.

Stats. 1850, 424, sec. 11.
Certificate of marriage: Civ. Code, sec. 73.
Recording certificate of marriage: Civ. Code, sec. 74.

361. *Cruel treatment of lunatics, etc.*

SEC. 361. Every person guilty of any harsh, cruel, or unkind treatment of, or any neglect of duty towards, any idiot, lunatic, or insane person, is guilty of a misdemeanor.

362. *Refusing to issue or obey writ of habeas corpus.*

SEC. 362. Every officer or person to whom a writ of habeas corpus may be directed, who, after service thereof, neglects or refuses to obey the command thereof, is guilty of a misdemeanor.

Stats. 1850, 334, secs. 9, 39.

363. *Reconfining persons discharged upon writ of habeas corpus.*

SEC. 363. Every person who, either solely or as member of a court, knowingly and unlawfully recommits, imprisons, or restrains of his liberty, for the

same cause, any person who has been discharged upon a writ of habeas corpus, is guilty of a misdemeanor.

"*Habeas corpus* act: Stats. 1850, 334; pt. 2, title 12, c. 1, secs. 1473 et seq., *post*. The word 'unlawfully' is inserted to exclude from the operation of the section a class of cases in which persons discharged may be rearrested or recommitted for the same offense:" Commissioners' note.

False imprisonment: See sec. 236.

Habeas corpus, writ of: Secs. 1473 et seq.

364. *Concealing persons entitled to benefit of habeas corpus.*

SEC. 364. Every person having in his custody or under his restraint or power any person for whose relief a writ of habeas corpus has been issued, who, with the intent to elude the service of such writ or to avoid the effect thereof, transfers such person to the custody of another, or places him under the power or control of another, or conceals or changes the place of his confinement or restraint, or removes him without the jurisdiction of the court or judge issuing the writ, is guilty of a misdemeanor.

Stats. 1850, 334, sec. 29.

Habeas corpus: See chapter concerning the writ of, secs. 1473 et seq.

365. *Innkeepers and carriers refusing to receive guests and passengers.*

SEC. 365. Every person and every agent or officer of any corporation carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor.

Common carriers of passengers: Civ. Code, secs. 2168–2176, 2180–2191.

Innkeepers: Civ. Code, secs. 1859, 1860.

366. *Counterfeiting quicksilver stamps.*

SEC. 366. Every person who counterfeits or who willfully uses the counterfeit seal or stamp of any person engaged in manufacturing or selling quicksilver is guilty of a felony.

367. *Selling debased quicksilver.*

SEC. 367. Every person who willfully sells, or offers for sale as pure, any debased or adulterated quicksilver is guilty of a misdemeanor.

TITLE X.

OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

368. *Death from explosions, etc.*

SEC. 368. Every person having charge of any steam-boiler or steam-engine, or other apparatus for generating or employing steam, used in any manufactory, or on any railroad, or in any vessel, or in any kind of mechanical work, who willfully, or from ignorance or neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is produced, is punishable by imprisonment in the state prison for not less than one nor more than ten years.

369. *Death from collision on railroads.*

SEC. 369. Every conductor, engineer, brakeman, switchman, or other person having charge, wholly or in part, of any railroad car, locomotive, or train, who willfully or negligently suffers or causes the same to collide with another car, locomotive, or train, or with any other object or thing, whereby the death of a

human being is produced, is punishable by imprisonment in the state prison for not less than one nor more than ten years.

370. *Public nuisances defined.*

SEC. 370. Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a public nuisance. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 431; *took effect July* 1, 1874.]

Public nuisance: Compare with Civ. Code, sec. 3480. See also sections 3490–3495 of that code upon this subject generally.

371. *Unequal annoyance or damage.*

SEC. 371. An act which affects an entire community or neighborhood, or any considerable number of persons, as specified in the last section, is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 432; *took effect July* 1, 1874.]

372. *Maintaining a nuisance a misdemeanor.*

SEC. 372. Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

373. *Establishing or keeping pest-houses within cities, towns, or villages.*

SEC. 373. Every person who establishes or keeps, or causes to be established or kept, within the limits of any city, town, or village, any pest-house, hospital, or place for persons affected with contagious or infectious diseases, is guilty of a misdemeanor.

Stats. 1853, 35, secs. 1, 2.

374. *Putting dead animals in streets, rivers, etc.*

SEC. 374. Every person who puts the carcass of any dead animal, or the offal from any slaughter-pen, corral, or butcher-shop, into any river, creek, pond, reservoir, stream, street, alley, public highway, or road in common use, or who attempts to destroy the same by fire within one fourth of a mile of any city, town, or village; and every person who puts the carcass of any dead animal, or any offal of any kind, in or upon the borders of any stream, pond, lake, or reservoir from which water is drawn for the supply of the inhabitants of any city, city and county, or any town in this state, so that the drainage from such carcass or offal may be taken up by or in such stream, pond, lake, or reservoir; or who allows the carcass of any dead animal, or any offal of any kind, to remain in or upon the borders of any such stream, pond, lake, or reservoir within the boundaries of any lands owned or occupied by him; or who keeps any horses, mules, cattle, swine, sheep, or live-stock of any kind, penned, corralled, or housed on, over, or on the borders of any such stream, pond, lake, or reservoir, so that the waters thereof shall become polluted by reason thereof—is guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed in section three hundred and seventy-seven of this code. [*Amendment, approved March* 23, 1876; *Amendments* 1875–6, 111; *took effect from passage.*]

375. *Keeping gunpowder, etc., unlawfully.*

SEC. 375. Every person who makes or keeps gunpowder, nitro-glycerine, or other highly explosive substance, within any city or town, or who carries the same through the streets thereof, in any quantity or manner such as is prohibited by law, or by any ordinance of such city or town, is guilty of a misdemeanor.

376. *Violation of quarantine laws by masters of vessels.*

SEC. 376. Every master of a vessel subject to quarantine or visitation by the quarantine officer, arriving in the port of San Francisco, who refuses or omits:

1. To proceed with and anchor his vessel at the place assigned for quarantine at the time of his arrival; or,

2. To submit his vessel, cargo, and passengers to the examination of the quarantine officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought, respectively, to be subject; or,

3. To remain with his vessel at the quarantine during the period assigned for her quarantine, and while at quarantine to comply with the regulations prescribed by law, and with such as any of the officers of health, by virtue of authority given them by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers, or crew;

—Is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding two thousand dollars, or both. [*Amendment, approved March* 9, 1878; *Amendments* 1877–8, 116; *took effect from passage.*]

Quarantine and health regulations for San Francisco: Secs. 3004 et seq. of Pol. Code.

Shipmaster's duties: Secs. 3013, 3014, 3016–3019, of Pol. Code.

377. *Willful violation of health laws.*

SEC. 377. Every person who willfully violates any of the laws of this state relating to the preservation of the public health is, unless a different punishment for such violation is prescribed by this code, punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or both.

Preservation of public health: Secs. 2978 et seq., Pol. Code.

378. *Neglecting to perform duties under health law.*

SEC. 378. Every person charged with the performance of any duty under the laws of this state relating to the preservation of the public health who willfully neglects or refuses to perform the same is guilty of a misdemeanor.

379. *Unlicensed piloting.*

SEC. 379. Every person not the master or owner, or not authorized to act as pilot under the laws of this state, who pilots or offers to pilot any vessel to or from any port of this state for which there are commissioned or licensed pilots, or who pilots or offers to pilot any vessel to or from any port other than that for which he is commissioned or licensed, and for which there are pilots so commissioned or licensed, is guilty of a misdemeanor. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 432; *took effect July* 1, 1874.]

The amendment inserted the words "not the master or owner, or."

"Founded upon Stats. 1869–70, 348, sec. 17. That act applies only to the port of San Francisco, but for the same reasons should be extended to all ports in this state having commissioned pilots: See 'Pilots and Pilot Regulations,' generally, secs. 2429–2447; San Francisco, etc.: Id., secs. 2457–2468; Humboldt bay, etc.: Id., secs. 2476–2491; and San Diego: Stats. 1871–2, 650–652; Pol. Code Cal., note to sec. 2491:" Commissioners' note.

380. *Apothecary omitting to label drugs, or labeling them wrongfully.*

SEC. 380. Every apothecary, druggist, or person carrying on business as a dealer in drugs or medicines, or person employed as clerk or salesman by such person, who, in putting up any drugs or medicines, or making up any prescription, or filling any order for drugs or medicines, willfully, negligently, or ignorantly omits to label the same, or puts an untrue label, stamp, or other designation of contents, upon any box, bottle, or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor, or if death ensues, is guilty of a felony.

An act to regulate the sale of certain poisonous substances, approved April 16, 1880; 1880, 102 (Ban. ed. 341). This act, which provides punishments for the sales of various specified poisons except under certain restrictions, will be found given in full under the head of "Medicine," *post.*

Putting false label on drugs: See *Thomas v. Winchester*, 6 N. Y. 397, where a manufacturing druggist was held liable for damages caused by the sale by a retailer of what he supposed was "extract of dandelion," the jar bought from the manufacturer being so marked, but in fact containing extract of belladona.

381. *Putting extraneous substances in packages of goods usually sold by weight, with intent to increase weight.*

SEC. 381. Every person who, in putting up in any bag, bale, box, barrel, or other package, any hops, cotton, wool, grain, hay, or other goods usually sold in bags, bales, boxes, barrels, or packages by weight, puts in or conceals therein anything whatever for the purpose of increasing the weight of such bag, bale, box, barrel, or package, with intent thereby to sell the goods therein, or to enable another to sell the same, for an increased weight, is punishable by fine of not less than twenty-five dollars for each offense. [*Amendment, approved March* 30, 1874; *Amendments* 1873-4, 432; *took effect July* 1, 1874.]

382. *Adulterating food, drugs, liquors, etc.*

SEC. 382. Every person who adulterates or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, or any article useful in compounding them, with a fraudulent intent to offer the same or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells, or keeps or offers for sale the same, as unadulterated or undiluted, is guilty of a misdemeanor.

"This and the succeeding section is based upon section 125 of the crimes and punishment act, Stats. 1850, 229, and upon the acts to prevent the adulteration of food, milk, etc., Stats. 1860, 186; 1862, 484; 1870, 298. The section follows the language of the New York penal code, secs. 451, 452:" Commissioners' note.

An Act to prevent the sale of oleomargarine under the name of and under pretense that said commodity is butter.

[Approved March 26, 1878; 1877-8, 535.]

Selling oleomargarine as butter, misdemeanor.

SECTION 1. Every person who sells, or keeps for sale, or offers for sale, or otherwise disposes of any quantity of oleomargarine, under the name of or under the pretense that the same is butter, or shall keep for sale or manufacture any quantity of oleomargarine, without branding the same, or the package in which it is contained, with the word "oleomargarine," shall be deemed guilty of a misdemeanor, and on conviction thereof before a court of competent jurisdiction shall be punishable by imprisonment in the county jail for a term not less than fifty nor more than two hundred days, or by fine not less than fifty nor more than two hundred dollars, or by both such fine and imprisonment.

SEC. 2. This act shall take effect and be in force from and after its passage.

An Act to prohibit and punish the sale of adulterated syrup.

[Approved March 29, 1878; 1877-8, 695.]

Selling adulterated syrup.

SECTION 1. Any person who shall knowingly sell, or keep or offer for sale, or otherwise dispose of any syrup, or golden-drips syrup, silver-drips syrup, or molasses, containing muriatic or sulphuric acids, or glucose, or adulterated with any other substance to improve the color thereof, shall be guilty of a misdemeanor.

Penalty.

SEC. 2. Any person violating the provisions of section one of this act shall be punished and imprisoned in the county jail of the county in which the offense is committed for a period not exceeding six months, or by a fine not exceeding five hundred dollars, or both.

SEC. 3. This act shall take effect from and after its passage.

383. *Disposing of tainted food, etc.*

SEC. 383. Every person who knowingly sells, or keeps or offers for sale, or otherwise disposes of any article of food, drink, drug, or medecine, knowing that the same has become tainted, decayed, spoiled, or otherwise unwholesome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank, is guilty of a misdemeanor.

An Act to prevent fraud and deception in the manufacture and sale of butter and cheese.

[Approved March 2, 1881; Stats. 1881, 14.]

To prevent fraud in the manufacture of butter and cheese.

SECTION 1. Whoever manufactures, sells, or offers for sale, or causes the same to be done, any substance purporting to be butter or cheese, having the semblance of butter or cheese, which substance is not made wholly from pure cream or milk, unless the same be manufactured under its true and appropriate name, and unless each package, roll, or parcel of such substance, and each vessel containing one or more packages of such substance, has distinctly and durably painted, stamped, or marked thereon, in English, the true and appropriate name of such substance, in ordinary bold-face capital letters, not less than five lines pica, shall be punished as provided in section three of this act.

Punishment provided for.

SEC. 2. Whoever shall sell any such substance as is mentioned in section one of this act, or causes the same to be done, without having on each package, roll, or parcel so sold a label attached thereto, on which is plainly and legibly printed in English, in Roman letters, the true and appropriate name of such substance, shall be punished as is provided in section three of this act.

Misdemeanor.

SEC. 3. Whoever shall violate section one or section two of this act shall be guilty of a misdemeanor, and shall be fined in any sum not less than ten nor more than five hundred dollars, or imprisoned in the county jail not less than ten nor more than ninety days, or by both such fine and imprisonment, in the discretion of the court; *provided*, that nothing contained in this act shall be construed to prevent the use of skimmed milk, salt rennet, or harmless coloring matter in the manufacture of butter or cheese.

SEC. 4. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 5. This act shall take effect on and after its passage.

An Act to prevent the sale or disposition, as butter, of the substance known as "oleomargarine," or "oleomagarine butter," and when "oleomargarine," or "oleomargarine butter," is sold or disposed of, requiring notice thereof to be given.

[Approved March 1, 1883; 1883, 20.]

Every package must be branded.

SECTION 1. Every person or corporation who shall manufacture for sale, or who shall offer or expose for sale, any article or substance in semblance of butter, not the legitimate product of the dairy, and not made exclusively of milk or cream, or into which the oil or fat of animals, not produced from milk, enters as a component part, or into which the oil or fat of animals, not produced from milk, has been introduced to take the place of cream, shall distinctly stamp, brand, or mark in some conspicuous place upon every package of such article or substance the word "oleomargarine," in plain letters, not less than one fourth of one inch square each; and in case of retail sale of such article or substance in parcels or otherwise, the seller shall, in all cases, deliver therewith to the purchaser a printed label, bearing the plainly printed word "oleomargarine," the said word to be printed with type each letter of which shall not be less than one fourth of one inch square.

Printed notice to be posted.

SEC. 2. Every person dealing, whether by wholesale or retail, in the article or substance described in section one of this act, and every hotel or restaurant keeper, or boarding-house keeper, in whose hotel, or restaurant, or boarding-house such article or substance is used, shall continuously keep conspicuously posted up, in not less than three exposed positions in and about their respective places of business, a printed notice in the following words, viz.: "Oleomargarine sold here;" the said notice to be plainly printed, with letters not less than two inches square each.

And each and every hotel keeper and restaurant keeper, boarding-house keeper, or proprietor of other places where meals are furnished for pay, who may use in their respective places of business any of the article or substance described in the first section of this act, shall, upon the furnishing of the same to his guests or customers, if inquiry is made, cause each and every guest or customer to be distinctly informed that the said article is not butter, the genuine production of the dairy, but is "oleomargarine."

Penalty for violation.

SEC. 3. Every person or director, trustee, officer, or agent of any corporation who may violate any provision of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five dollars nor more than five hundred dollars, or by imprisonment for not more than three months, or by both such fine and imprisonment; and it shall be the duty of the court trying said offense to order the payment of one half of the fine imposed to the person giving the information upon which the prosecution was based and the conviction had, and such fine may be collected by execution as in civil causes.

SEC. 4. All acts or parts of acts in conflict with this act are hereby repealed.

384. *Setting woods on fire.*

SEC. 384. Every person who willfully or negligently sets on fire, or causes or procures to be set on fire, any woods, prairies, grasses, or grain, on any lands, is guilty of a misdemeanor.

Stats. 1852, 111, sec. 1.

An Act to prevent the destruction of forests by fire on public lands.

[Approved February 13, 1872; 1871-2, 96.]

Setting fire to forests, etc.

SECTION 1. Any person or persons who shall willfully and deliberately set fire to any wooded country or forest belonging to this state or the United States, within this state, or to any place from which fire shall be communicated to any such wooded country or forest, or who shall accidentally set fire to any such wooded country or forest, or to any place from which fire shall be communicated to any such wooded country or forest, and shall not extinguish the same, or use every effort to that end, or who shall build any fire, for lawful purposes or otherwise, in or near any such wooded country or forest, and through carelessness or neglect shall permit said fire to extend to and burn through such wooded country or forest, shall be deemed guilty of a misdemeanor, and on conviction, before a court of competent jurisdiction, shall be punishable by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment; *provided*, that nothing herein contained shall apply to any person who in good faith shall set a back-fire to prevent the extension of a fire already burning. All fines collected under this act shall be paid into the county treasury for the benefit of the common school fund of the county in which they are collected.

385. *Obstructing attempts to extinguish fires.*

SEC. 385. Every person who, at the burning of a building, disobeys the lawful orders of any public officer or fireman, or offers any resistance to or interference with the lawful efforts of any fireman or company of firemen to extinguish the same, or engages in any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents, or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

Fires and firemen: See Pol. Code, secs. 3335 et seq.

386. *Maintaining bridge or ferry without authority.*

SEC. 386. Every person who demands or receives compensation for the use of any bridge or ferry, or sets up or keeps any road, bridge, ferry, or constructed ford for the purpose of receiving any remuneration for the use of the same, without authority of law, is guilty of a misdemeanor.

Public ferries and toll-bridges: Secs. 2843 et seq., Pol. Code.

387. *Violating condition of undertaking to keep ferry.*

SEC. 387. Every person who, having entered into an undertaking to keep and attend a ferry, violates the conditions of such undertaking, is guilty of a misdemeanor.

Undertaking by ferryman: See Sec. 2850, Pol. Code.

388. *Riding or driving faster than a walk on toll-bridges.*

SEC. 388. Every person who willfully rides or drives faster than a walk on or over any toll-bridge, lawfully licensed, is punishable by fine not exceeding twenty dollars.

Stats. 1861, 18, sec. 1.

389. *Crossing bridge, etc., without paying toll.*

SEC. 389. Every person not exempt from paying tolls who crosses on any ferry or toll-bridge, or passes through any toll-gate, lawfully kept, without paying the toll therefor, and with intent to avoid such payment, is punishable by fine not exceeding twenty dollars.

Stats. 1861, 18, sec. 2.

390. *Engineer of locomotive-engine omitting to ring bell when crossing highway.*

SEC. 390. Every person in charge of a locomotive-engine who, before crossing any traveled public way, omits to cause a bell to ring or steam-whistle to sound at the distance of at least eighty rods from the crossing, and up to it, is guilty of a misdemeanor.

391. *Intoxication of engineers, conductors, or drivers of locomotives or cars.*

SEC. 391. Every person who is intoxicated while in charge of a locomotive-engine, or while acting as conductor or driver upon any railroad train or car, whether propelled by steam or drawn by horses, or while acting as train-dispatcher or as telegraph operator, receiving or transmitting dispatches in relation to the movement of trains, is guilty of a misdemeanor.

"See Pol. Code, secs. 2920-2933. This section was amended so as to read as published in the text, by act of April 1, 1872: 'An act to amend and in relation to the Political, Civil, and Penal codes, and the Code of Civil Procedure,' now on file in the office of the secretary of state:" Commissioners' note.

392. *Placing passenger-cars in front of freight-cars.*

SEC. 392. Every person who, in making up or running railroad trains, places or runs, or causes to be placed or run, any freight-car in the rear of passenger-cars, is guilty of a misdemeanor, and if loss of life or limb results from such placing or running, is guilty of felony. The term "freight-car," as used in this section, does not include a baggage, express, or mail car.

"This section was amended so as to read as published in the text, by act of April 1, 1872: 'An act to amend and in relation to the Political, Civil, and Penal codes, and the Code of Civil Procedure,' now on file in the office of the secretary of state:" Commissioners' note.

393. *Violation of duty by employees of railroad companies.*

SEC. 393. Every engineer, conductor, brakeman, switch-tender, or other officer, agent, or servant of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent, or servant, whereby human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor.

394. *Exposing person infected with any contagious disease in a public place.*

SEC. 394. Every person who willfully exposes himself or another afflicted with any contagious or infectious disease, in any public place or thoroughfare, except in his necessary removal in a manner the least dangerous to the public health, is guilty of a misdemeanor.

395. *Frauds practiced to affect the market price.*

SEC. 395. Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or

device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor.

396. *Racing upon highways.*

SEC. 396. Every person driving any conveyance drawn by horses, upon any public road or way, who causes or suffers his horses to run, with intent to pass another conveyance, or to prevent such other from passing his own, is guilty of a misdemeanor.

397. *Sale of intoxicating liquors to drunkards or Indians.*

SEC. 397. Every person who sells or furnishes, or causes to be sold or furnished, intoxicating liquors to any habitual or common drunkard, or Indian, is guilty of a misdemeanor. [*Amendment, approved March* 26, 1874; *Amendments* 1873–4, 462; *took effect sixtieth day after passage.*]

An act to prevent the sale of intoxicating drinks to minors, approved March 4, 1872; 1871–2, 231; see *ante*, sec. 306.

398. *Selling fire-arms and ammunition to Indians.*

SEC. 398. Every person who sells or furnishes to any Indian any fire-arm, or ammunition therefor, is guilty of a misdemeanor.

399. *Death from mischievous animals.*

SEC. 399. If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large, or while not kept with ordinary care, kills any human being who has taken all the precautions which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

400. *Exhibiting deformities for hire.*

SEC. 400. Every person exhibiting the deformities of another, or his own deformities, for hire, is guilty of a misdemeanor; and every person who shall by any artificial means give to any person the appearance of a deformity, and shall exhibit such person for hire, shall be guilty of a misdemeanor. [*New section, approved February* 4, 1874; *Amendments* 1873–4, 462; *took effect sixtieth day after passage.*]

Aiding, advising, or encouraging suicide.

SEC. 400. Every person who deliberately aids or advises, or encourages, another to commit suicide, is guilty of a felony. [*New section, approved March* 30, 1874; *Amendments* 1873–4, 433; *took effect July* 1, 1874.]

Sale or exposure of animals having glanders—Misdemeanor.

SEC. 400. Any person who shall knowingly sell, or offer for sale or use, or expose, or who shall cause or procure to be sold or offered for sale, or used, or exposed, any horse, mule, or other animal having the disease known as glanders, or farcy, shall be guilty of a misdemeanor. [*New section, approved April* 16, 1880; *Amendments* 1880, 41 (*Ban. ed.* 376); *took effect immediately.*]

The repeating the numbers of sections 400 and 401 presumably arose from an oversight on the part of the legislature. The subject-matter of the sections is quite different.

401. *Adulteration of candies.*

SEC. 401. Every person who adulterates candy, by using in its manufacture terra alba, or any other deleterious substance or substances, or who sells or keeps for sale any candy or candies adulterated with terra alba or any other deleterious substance or substances, is guilty of a misdemeanor. [*New section, approved March* 16, 1878; *Amendments* 1877–8, 116; *took effect from passage.*]

Animals having glanders to be killed.

SEC. 401. Every animal having glanders, or farcy, shall at once be deprived of life by the owner or person having charge thereof, upon discovery or knowledge of its condition, and any such owner or person omitting or refusing to comply with the provisions of this section shall be guilty of a misdemeanor. [*New section, approved April* 16, 1880; *Amendments* 1880, 41 (*Ban. ed.* 376); *took effect immediately.*]

TITLE XI.

OF CRIMES AGAINST THE PUBLIC PEACE.

403. *Disturbance of public meetings other than religious or political.*

SEC. 403. Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than such as is mentioned in sections fifty-nine and three hundred and two, is guilty of a misdemeanor.

Section 59 refers to meetings of electors. **Section 302** refers to religious meetings.

404. *Riot defined.*

SEC. 404. Any use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.

Riot defined.—In order to make a riot at common law, an unlawful assemblage must be shown; and if a number of persons, lawfully assembled, suddenly and without premeditation, fell together by the ears, it was only an affray; but if, being thus assembled, they concoct a breach of the peace, and in pursuance thereof execute it, this is a sufficient assemblage to make a riot: *Dougherty* v. *People*, 4 Scam. 179; 1 Hawk. P. C. 514; 1 Russell on Crimes, 378; 2 Whart. Crim. L., 8th ed., sec. 1538. It must also be shown that the assembling was accompanied by some such circumstance, either of actual force and violence, or at least having an apparent tendency thereto, as were calculated to inspire people with terror, such as being armed, making threatening speeches, or the like: *Rex* v. *Hughes*, 4 Car. & & P. 373; *State* v. *Straw*, 33 Me. 554; 2 Whart. Crim. L., 8th ed., sec. 1539. It is generally held not to make any difference whether the act intended to be done by the persons assembled be of itself lawful or unlawful; for if a body of men assemble together for the purpose of obtaining any particular end, and conduct themselves in a turbulent manner, either with acts of violence, or with threats and intimidations calculated to excite the terror of the people, this is of itself a riot, whether the end and object proposed be a just and legitimate one or not: 1 Russell on Crimes, 380; *Kiphart* v. *State*, 42 Ind. 273. At common law, no act amounted to a riot, rout, or unlawful assembly, unless three or more persons mutually engaged in it: 4 Bla. Com. 146; 1 Hawk. P. C., c. 65, sec. 1; 1 Russell on Crimes, 378.

Riot, rout, distinction between: See note to sec. 406.

Unlawful assembly: See sec. 407.

405. *Riot, punishment of.*

SEC. 405. Every person who participates in any riot is punishable by imprisonment in the county jail not exceeding two years, or by fine not exceeding two thousand dollars, or both.

406. *Rout defined.*

SEC. 406. Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout.

Rout.—"Stats. 1855, 105, sec. 3. This corresponds with the common-law definition, but the riot which would ensue, if the intended enterprise were carried into execution, is the riot defined in section 404, *ante*, and not the common-law riot. A rout is an unexecuted intended riot: Russell on Crimes, 253; 4 Bla. Com. 140:" Commissioners' note.

407. *Unlawful assembly defined.*

SEC. 407. Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

408. *Punishment of rout and unlawful assembly.*

SEC. 408. Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

Stats. 1855, 105, sec. 3.

409. *Remaining present at place of riot, etc., after warning to disperse.*

SEC. 409. Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

410. *Magistrates neglecting or refusing to disperse rioters.*

SEC. 410. If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

Stats. 1851, 216, sec. 43.

411. *Consequence of resisting process after a county has been declared in a state of insurrection.*

SEC. 411. A person who, after the publication of the proclamation authorized by section seven hundred and thirty-two, resists or aids in resisting the execution of process in any county declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting any force ordered out by the governor to quell or suppress an insurrection, is punishable by imprisonment in the state prison not less than two years.

Stats. 1851, 212, sec. 50.

412. *Prize-fights.*

SEC. 412. Every person who engages in, institutes, encourages, or promotes any ring or prize fight, or any other premeditated fight or contention (without deadly weapons), either as principal, aid, second, umpire, surgeon, or otherwise, is punishable by imprisonment in the state prison not exceeding two years.

413. *Persons present at prize-fights.*

SEC. 413. Every person willfully present as a spectator at any fight or contention mentioned in the preceding section is guilty of a misdemeanor.

Stats. 1851, 216.

414. *Leaving the state to engage in prize-fights.*

SEC. 414. Every person who leaves this state with intent to evade any of the provisions of the last two sections, and to commit any act out of this state such as is prohibited by them, and who does any act which would be punishable under these provisions if committed within this state, is punishable in the same manner as he would have been in case such act had been committed within this state.

"This corresponds with section 231, *ante*—leaving the state to fight a duel—each being so framed that proof of any act in aid of a duel, or of a ring or prize fight, is sufficient to convict:" Commissioners' note.

415. *Disturbing the peace.*

SEC. 415. Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood or person by loud or unusual noise, or by tumultuous or offensive conduct, or threatening, traducing, quarreling, challenging to fight, or fighting, or who, on the public streets of any unincorporated town, or upon the public highways in such unincorporated town, run any horse-race, either for a wager or for amusement, or fire any gun or pistol in such unincorporated town, or use any vulgar, profane, or indecent language within the presence or hearing of women or children, in a loud and boisterous manner, is guilty of a misdemeanor, and upon conviction by any court of competent jurisdiction shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both fine and imprisonment, or either, at the discretion of the court. [*Amendment, approved March* 20, 1878; *Amendments* 1877–8, 117; *took effect from passage.*]

Vulgar language.—This section does not require that vulgar language, to be punishable, should be used in a town corporated or unincorporated, and the criminal complaint need not allege the language used: *Ex parte Foley*, 62 Cal. 508.

416. *Refusing to disperse upon lawful command.*

SEC. 416. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons so offending are severally guilty of a misdemeanor.

Stats. 1850, 243.

417. *Exhibiting deadly weapon in rude, etc., manner, or using the same unlawfully.*

SEC. 417. Every person who, not in necessary self-defense, in the presence of two or more persons, draws or exhibits any deadly weapon in a rude, angry, and threatening manner, or who, in any manner, unlawfully uses the same, in any fight or quarrel, is guilty of a misdemeanor.

Stats. 1855, 268, sec. 1.

418. *Forcible entry and detainer.*

SEC. 418. Every person using, or procuring, encouraging, or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and in the manner allowed by law, is guilty of a misdemeanor.

Forcible entry and detainer: See secs. 1159 et seq.

419. *Returning to take possession of lands after being removed by legal proceedings.*

SEC. 419. Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal, or officer, and who afterwards unlawfully returns to settle, reside upon, or take possession of such lands, is guilty of a misdemeanor.

"This section is founded upon and to carry out the spirit of an act for the punishment of contempts and trespass, Stats. 1862, 115, and is similar to New York political code, sec. 493:" Commissioners' note.

420. *Inciting riot.*

New section 420, relating to the uttering of language with intent to incite a riot or acts of criminal violence against person or property, approved January 19, 1878, Amendments 1877–8, 117, was repealed by act of February 7, 1880, Amendments 1880, 1 (Ban. ed. 4); took effect from passage.

TITLE XII.

OF CRIMES AGAINST THE REVENUE AND PROPERTY OF THIS STATE.

424. *Embezzlement and falsification of accounts by public officers.*

SEC. 424. Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safe-keeping, transfer, or disbursement of public moneys, who either:

1. Without authority of law appropriates the same, or any portion thereof, to his own use, or to the use of another; or,

2. Loans the same or any portion thereof, or having the possession or control of any public money, makes a profit out of, or uses the same for any purpose not authorized by law; or,

3. Fails to keep the same in his possession until disbursed or paid out by authority of law; or,

4. Unlawfully deposits the same, or any portion thereof, in any bank, or with any banker or other person; or,

5. Changes or converts any portion thereof from coin into currency, or from currency into coin, or other currency, without authority of law; or,

6. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

7. Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or,

8. Willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by competent authority; or,

9. Willfully omits to transfer the same when such transfer is required by law; or,

10. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same any money received by him under any duty imposed by law so to pay over the same;

—Is punishable by imprisonment in the state prison for not less than one nor more than ten years, and is disqualified from holding any office in this state. [*Amendment, approved April* 16, 1880; *Amendments* 1880, 39 (*Ban. ed.* 310); *took effect immediately.*]

In *People* v. *Carrillo*, 54 Cal. 63, where an indictment founded upon this section charged the defendant, who was the tax collector of the city of Los Angeles, with the receipt of certain public funds belonging to the city, and with fraudulently appropriating them to his own use, it was held error for the court to instruct the jury that the failure of the prisoner to pay over the money, if unexplained, raised a presumption of felonious appropriation, which would authorize a verdict of guilty.

425. *Officers neglecting to pay over public moneys.*

SEC. 425. Every officer charged with the receipt, safe-keeping, or disbursement of public moneys, who neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of felony.

Fines to be paid over: Secs. 1457, 1570.

426. *"Public moneys," as used in the preceding section, defined.*

SEC. 426. The phrase "public moneys," as used in the two preceding sections, includes all bonds and evidences of indebtedness, and all moneys belong-

ing to the state, or any city, county, town, or district therein, and all moneys, bonds, and evidences of indebtedness received or held by state, county, district, city, or town officers in their official capacity.

427. *Failure to pay over fines and forfeitures received, a misdemeanor.*

SEC. 427. If any clerk, justice of the peace, sheriff, or constable, who receives any fine or forfeiture, refuses or neglects to pay over the same according to law and within thirty days after the receipt thereof, he is guilty of a misdemeanor.

Stats. 1851, 212, sec. 680.
Cited in *County of Los Angeles* v. *City of Los Angeles*, 3 West Coast Rep. 442.

428. *Obstructing officer in collecting revenue.*

SEC. 428. Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which the people of this state are interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

429. *Refusing to give assessor list of property, or giving false name.*

SEC. 429. Every person who unlawfully refuses, upon demand, to give to any county assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name or fraudulently refuses to give his true name to any assessor, when demanded by such assessor in the discharge of his official duties, is guilty of a misdemeanor.

Stats. 1861, 419, secs. 17, 18.

430. *Making false statements, not under oath, in reference to taxes.*

SEC. 430. Every person who, in making any statement, not upon oath, oral or written, which is required or authorized by law to be made, as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully states anything which he knows to be false, is guilty of a misdemeanor.

Stats. 1861, 419, secs. 17, 18, 68.

431. *Delivering receipts for poll-taxes, other than prescribed by law, or collecting poll-taxes, etc., without giving proper receipt.*

SEC. 431. Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment of any poll-tax, road tax, or license of any kind, or who receives payment of such tax or license without delivering the receipt prescribed by law, or who inserts the name of more than one person therein, is guilty of a misdemeanor.

"Stats. 1861, 419, sec. 95. This and the nine following sections are extended to cover the several provisions of the revenue law relating to tax receipts, licenses, etc.: See Pol. Code Cal., secs. 3356-3385, 'Licenses,' and 3607-3892, 'Revenue:'" Commissioners' note.

432. *Having blank receipts for licenses, etc., other than those prescribed by law.*

SEC. 432. Every person who has in his possession, with intent to circulate or sell, any blank licenses or poll-tax receipts other than those furnished by the controller of state or county auditor, is guilty of felony.

433. *Undated foreign-miners' licenses.*

Section 433 was repealed by an act entitled "An act to amend and in relation to the Political, Civil, and Penal codes, and the Code of Civil Procedure," approved April 1, 1872. It related to selling undated foreign-miners' licenses. The Penal Code was adopted February 14, 1872, and went into effect January 1, 1873.

434. *Refusing to give name of persons in employment, etc.*

SEC. 434. Every person who, when requested by the collector of taxes or licenses, refuses to give to such collector the name and residence of each man

in his employment, or to give such collector access to the building or place where such men are employed, is guilty of a misdemeanor.

"Stats. 1864, 45, sec. 1. This section was more particularly applicable to the collection of foreign-miners' license; but it is competent for the collector to enforce this information from any one when collecting taxes: See also Pol. Code Cal., secs. 3848-3850:" Commissioners' note.

435. *Carrying on business without license.*

SEC. 435. Every person who commences or carries on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by any law of this state, without taking out or procuring the license prescribed by such law, is guilty of a misdemeanor.

Licenses: See Pol. Code, secs. 3356 et seq. **License law:** See "an act to prohibit the issuance of licenses to aliens," etc., approved April 12, 1880: Stats. 1880, 39. In *People* v. *Quong On Long*, 6 Pac. C. L. J. 116, this act was held unconstitutional.

436. *Unlawfully acting as auctioneer.*

SEC. 436. Every person who acts as an auctioneer in violation of the laws of this state relating to auctions and auctioneers is guilty of a misdemeanor.

437, 438. *Forging revenue stamps.*

Sections 437 and 438 were repealed by act approved April 1, 1872.

The two repealed sections became inoperative and unnecessary by the stamp tax being declared unconstitutional in *Brummagin* v. *Tillinghast*, 18 Cal. 265.

439. *Effecting insurance on account of foreign companies that have not complied with laws of state.*

SEC. 439. Every person who in this state procures, or agrees to procure, any insurance for a resident of this state, from any insurance company not incorporated under the laws of this state, unless such company or its agent has filed the bond required by the laws of this state relating to insurance, is guilty of a misdemeanor.

Bonds from foreign corporations: Pol. Code, sec. 623.

440. *Officer charged with collection, etc., of revenue, refusing to permit inspection of books.*

SEC. 440. Every officer charged with the collection, receipt, or disbursement of any portion of the revenue of this state, who, upon demand, fails or refuses to permit the controller or attorney-general to inspect his books, papers, receipts, and records pertaining to his office, is guilty of a misdemeanor.

Stats. 1852, 57, sec. 2.

441. *Board of examiners, controller, and treasurer neglecting certain duties.*

SEC. 441. Every member of the board of examiners, and every controller or state treasurer, who violates any of the provisions of the laws of this state relating to the board of examiners, or prescribing its powers and duties, is guilty of a felony.

Board of examiners: Pol. Code, secs. 654 et seq.

442. *Having state arms, etc.*

SEC. 442. Every person who unlawfully retains in his possession any arms, equipments, clothing, or military stores belonging to the state, or the property of any company of the state militia, is guilty of a misdemeanor.

Stats. 1866, 735, sec. 50.

443. *Selling state arms, etc.*

SEC. 443. Every member of the state militia who unlawfully disposes of any arms, equipments, clothing, or military stores, the property of this state, or of any company of the state militia, is guilty of a misdemeanor.

TITLE XIII.

OF CRIMES AGAINST PROPERTY.

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CHAPTER I.

ARSON.

447. *Arson defined.*

SEC. 447. Arson is the willful and malicious burning of a building, with intent to destroy it.

Arson.—The definition given by the above section, though somewhat more extensive, is substantially that of the common-law authorities. The offense is restricted to the burning of a dwelling-house, or some edifice adapted for or connected with human occupation; thus making the gravity of the offense consist in the peril to the person which such burning involves: 1 Whart. Crim. L., 8th ed., sec. 825; 2 Russell on Crimes, 1024; 4 Bla. Com. 219; 2 East P. C. 1015. This and the succeeding sections in this chapter apply, it would seem, only to cases of the burning by one of a building owned or occupied by another: See sec. 452, note 1. The punishment of one who destroys his own property for the purpose of obtaining the insurance thereon is provided by section 548. See, generally, *People* v. *Hughes*, 29 Cal. 257; *People* v. *Scott*, 32 Id. 200; *People* v. *Trin*, 39 Id. 75; *People* v. *Wooley*, 44 Id. 494; *People* v. *Haggerty*, 46 Id. 354; *People* v. *Simpson*, 50 Id. 304; *People* v. *Shainwold*, 51 Id. 468; *People* v. *Fisher*, Id. 319; *People* v. *Coch*, 53 Id. 627; see sec. 451, note.

Malice and intent.—It would appear but reasonable as well as just that malice sufficient to constitute arson should be inferred from the proof that the prisoner committed an act of burning a building, and that some other person was rightfully in possession of or actually occupying any part thereof. It ought not to be necessary that the accused should have had actual knowledge of such possession or occupancy, or should have intended to injure another person: See *Rex* v. *Farrington*, Russ. & Ry. 207; *People* v. *Van Blarcum*, 2 Johns. 105; *People* v. *Orcutt*, 1 Park. Cr. 252; *People* v. *Henderson*, Id. 563; *Jesse* v. *State*, 28 Miss. 100. In *Regina* v. *Regan*, 4 Cox C. C. 335, it appeared that the prisoner's intent in setting fire to the building was to obtain a reward offered for giving the earliest intimation of a fire at the engine station: *Held*, he was guilty of arson. But the burning of a building, under circumstances which show beyond a reasonable doubt that there was no intent to destroy it, is not arson: *People* v. *Cotteral*, 18 Johns. 115; *State* v. *Mitchell*, 5 Ired. 350. But where any appurtenance to any building is so situated with reference to such building, or where any building is so situated with reference to another building, that the burning of the one will manifestly endanger the other, a burning of the one is deemed a burning of the other, within the foregoing definition of arson, and as against any person actually participating in the original setting fire, as of the moment when the fire from the one shall communicate to and burn the other: *Robert's Case*, 2 East P. C. 1030; *Isaac's Case*, Id. 1031; *Regina* v. *Fletcher*, 2 Car. & Kir. 215; *Regina* v. *Paice*, 1 Id. 73; *Rex* v. *Pedley*, 1 Leach, 4th ed., 242.

Burning insured property: Sec. 548.

448. *Building defined.*

SEC. 448. Any house, edifice, structure, vessel, or other erection capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted, is a "building" within the meaning of this chapter.

449. *Inhabited building defined.*

SEC. 449. Any building which has usually been occupied by any person lodging therein at night is an "inhabited building" within the meaning of this chapter.

450. *Night-time defined.*

SEC. 450. The phrase "night-time," as used in this chapter, means the period between sunset and sunrise.

451. *Burning defined.*

SEC. 451. To constitute a burning, within the meaning of this chapter, it is not necessary that the building set on fire should have been destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building.

Burning, what constitutes.—Where a fire was set in old rags saturated with coal-oil, and lying upon the floor of the house, but was quickly discovered and put out, leaving a spot on the floor slightly charred, so as to destroy the fibers of the wood, it was held sufficient to constitute the offense: *People* v. *Haggerty*, 46 Cal. 354. And where a wooden partition annexed to a building was charred by fire, and in one place burned through, the burning was held sufficient to constitute arson: *People* v. *Simpson*, 50 Id. 304.

452. *Ownership of the building.*

SEC. 452. To constitute arson, it is not necessary that a person other than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in possession of or was actually occupying such building, or any part thereof.

Ownership.—At common law, a man could not commit arson by burning a house of which he was lawfully in possession as tenant: *Rex* v. *Pedley*, 1 Leach, 4th ed., 242; 2 East P. C. 1026; *Holmes's Case*, Cro. Car. 376. In this state, however, it is sufficient to prove that some person other than defendant occupied the building: *People* v. *Wooley*, 44 Cal. 494. And where the defendant is tenant of the house, it is sufficient to allege in the indictment, and prove at the trial, that the landlord is owner of the house: *People* v. *Simpson*, 50 Id. 304.

453. *Degrees af arson.*

SEC. 453. Arson is divided into two degrees.

Degree.—If the offense charged in the indictment amounts only to arson in the second degree, it is unnecessary for the jury to specify in their verdict the degree of the crime of which the defendant is found guilty: *People* v. *Fisher*, 51 Cal. 319.

454. *Arson in first degree—Arson in second degree.*

SEC. 454. Maliciously burning in the night-time an inhabited building in which there is at the time some human being is arson of the first degree. All other kinds of arson are of the second degree.

"Stats. 1856, 132, secs. 4, 5; similar to New York penal code, sec. 532. Taken in connection with the definition of 'building' and 'inhabited,' given in sections 448 and 449, *ante*, this section would embrace as arson in the first degree the burning of a ship or vessel while lying within this state, if committed in the night-time, for it is an offense of as grave a character as burning an inhabited dwelling:" Commissioners' note.

An act of April 1, 1872, Stats. 1871–2, 895, defining arson in the second degree, was superseded by the above section.

Setting on fire of woods, prairies, grasses, or grain, on any lands, see *ante*, sec. 384.

455. *Punishment of arson.*

SEC. 455. Arson is punishable by imprisonment in the state prison as follows:

1. Arson in the first degree, for not less than two years;
2. Arson in the second degree, for not less than one nor more than ten years.

"This chapter is founded upon sections 4, 5, and 6 of act concerning crimes and punishments of 1856: Stats. 1856, 132. The text omits the clause in section 4 which provides that 'should the lives of any persons be lost in consequence of such burning the offender shall be deemed guilty of murder, and shall be indicted and punished accordingly.' This provision is surplusage, for the killing in that case is in the perpetration of arson, and falls within the definition of murder in the first degree: See sec. 189, *ante:*" Commissioners' note.

CHAPTER II

BURGLARY AND HOUSE-BREAKING.

459. *Burglary defined.*

SEC. 459. Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, or railroad car, with intent to commit grand or petit larceny, or any felony, is guilty of burglary. [*Amendment, approved February* 9, 1876; *Amendments* 1875–6, 111; *took effect from twelve o'clock noon, May* 1, 1876.]

460. *Burglary of first and second degrees.*

SEC. 460. Every burglary committed in the night-time is burglary of the first degree, and every burglary committed in the day-time is burglary of the second degree. [*Amendment, approved February* 9, 1876; *Amendments* 1875–6, 111; *took effect from twelve o'clock noon, May* 1, 1876.]

Degrees of burglary.—Prior to the amendment of the above section the law of this state recognized burglary as a crime that could only be committed in the night-time, and called the offense of breaking into a house in the day-time, with intent to commit a felony, house-breaking. This corresponded with the common law. The object and effect of the amendments are obvious. Under the law as it stood before, no conviction could be had for burglary if the offense proved happened to be house-breaking, and *vice versa: People* v. *Griffin*, 19 Cal. 578. Under the code as it now stands, the indictment, to cover both degrees of burglary, should not specify that the entry was either by day or night, but should charge burglary generally, and leave the degree to be determined by the jury, or, in case the defendant plead guilty, by the court: *People* v. *Jefferson*, 52 Id. 452; *People* v. *Barnhart*, 59 Id. 381; see sections 1157, note, and 1192, note.

Burglary defined.—The entering of a building with intent to commit larceny, or some felony, is all that is made essential to the crime. The entry and intent being found, the crime would be complete, even though it should turn out, contrary to the calculations of the burglar, that the building was empty: *People* v. *Shaber*, 32 Cal. 36. Where defendant was indicted, and, upon sufficient evidence, found guilty of burglary, in having entered a house with intent to commit petit larceny, it was held immaterial that he might also have had the further intent to have sexual intercourse with a woman who was in the house: *People* v. *Soto*, 53 Id. 415. A larceny, though committed at the same time, is not necessarily included in a burglary, as manslaughter is in murder. The offense of burglary is complete without any larceny being committed. Upon an indictment for burglary, defendant cannot be found guilty of larceny: *People* v. *Garnett*, 29 Id. 622. Where defendant proposed to another to enter a house and steal some money concealed there, and the other, for the purpose of entrapping defendant, appeared to assent, but went and informed the sheriff, and thereafter, by advice of the sheriff and district attorney, did enter the house and take the money, the defendant keeping watch on the outside, and the money obtained was then divided between the two, and thereupon the sheriff immediately arrested defendant, it was held that since the person who entered the building and took the money had no intention of stealing it, but intended solely to entrap defendant into the apparent commission of a crime, no burglary was committed, there being no felonious intent in entering the house or taking the money: *People* v. *Collins*, 53 Id. 185.

At common law, burglary was defined to be a breaking and entering the mansion-house of another in the night, with intent to commit some felony within the same, whether such felonious intent be executed or not: 4 Bla. Com. 224; 2 East P. C. 484; 2 Russell on Crimes, 1; *Allen* v. *State*, 40 Ala. 334. A comparison of this definition with the above section of the code will show that many acts in this state will come within the definition of burglary that were not so at common law. Prior to the amendment of 1876, burglary in this state could only be committed in the night-time—the felonious entering of a house in the day-time being house-breaking. In the case of *People* v. *Stickman*, 34 Cal. 242, the court defined the word "house" to include every kind of buildings or structures "housed in," or roofed, regardless of the fact whether they are at the time, or ever have been, inhabited by members of the human family. A house is any structure which has walls on all sides, and is covered by a roof. In *People* v. *Ah Ping*, 27 Id. 489, the court held that the mere fact that one person is with another who enters a dwelling-house and steals therefrom, and sees him steal without interference, does not render him guilty of the crime of burglary: See *People* v. *Kennedy*, 55 Id. 201.

Indictment.—Charging the crime in the

language of the statute is sufficient: *People* v. *Lewis*, 61 Cal. 366. It is sufficient to charge the ownership of the room to be in him who rents and occupies it as a lodger, though another have supervision and general control of the whole house: *People* v. *St. Clair*, 38 Id. 137. Where the indictment described a particular room as the one entered, the prosecution cannot prove that defendant entered a different room: *People* v. *Barnes*, 48 Id. 551. The indictment should not state the degree of the crime, but should charge burglary generally: See sec. 460, note; *People* v. *Jefferson*, 52 Id. 452. The hour of the night at which a burglary is committed is not of the essence of the crime, and it need not be averred in the indictment: *People* v. *Burgess*, 35 Id. 115. Charging a person with entering into a stable with intent to commit "larcey" is insufficient. No such crime as "larcey" exists in this state: *People* v. *St. Clair*, 55 Id. 524.

Burglarious tools as evidence.—Sec. 1102, note; *People* v. *Hope*, 62 Cal. 291. And an information is defective that charges that the accused "unlawfully, feloniously, and burglariously did forcibly enter" the tent of the person named, "with the intent then and there to commit the crime of felony:" *People* v. *Nelson*, 58 Id. 104. There is no such distinctive crime as felony: Id.

461. *Punishment of burglary.*

SEC. 461. Burglary of the first degree is punishable by imprisonment in the state prison for not less than one nor more than fifteen years. Burglary of the second degree is punishable by imprisonment in the state prison for not more than five years. [*Amendment, approved February* 9, 1876; *Amendments* 1875–6, 111; *took effect from twelve o'clock noon, May* 1, 1876.]

462. *Punishment of house-breaking.*

Section 462 was repealed by act approved February 9, 1876; Amendments 1875–6, 111; took effect from twelve o'clock noon, May 1, 1876.

An Act to amend sections four hundred and fifty-nine, four hundred and sixty, and four hundred and sixty-one, and to repeal section four hundred and sixty-two of the Penal Code.

[Approved February 9, 1876; Amendments 1875–6, 111.]

Sections 1, 2, 3, and 4 contain the amendments to sections 459, 460, and 461, and the repeal of section 462 above inserted or indicated.

SEC. 5. Nothing in this act shall affect any act committed, or verdict or judgment rendered or entered before it takes effect, but all acts committed before it takes effect shall be inquired of, prosecuted, and punished in the same manner as if this act had not been passed.

SEC. 6. This act shall be in force from and after twelve o'clock, noon, on the first day of May, eighteen hundred and seventy-six.

463. *Night-time defined.*

SEC. 463. The phrase "night-time," as used in this chapter, means the period between sunset and sunrise.

Night-time.—Between six and seven o'clock in the evening, on the thirty-first of August, was not in the night-time: *People* v. *Griffin*, 19 Cal. 578. To charge the offense in the night-time is sufficient without giving the hour, and if the hour is alleged, it is unnecessary to prove it: *People* v. *Burgess*, 35 Cal. 117; 2 East P. C. 513; Whart. Crim. L., secs. 270, 271, 612.

CHAPTER III.

HAVING POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS.

466. *Guilty possession of burglarious implements.*

SEC. 466. Every person having upon him, or in his possession, a pick-lock, crow, key, bit, or other instrument or tool, with intent feloniously to break or enter into any building, or who shall knowingly make or alter, or shall attempt to make or alter, any key or other instrument above named so that the same will fit or open the lock of a building, without being requested so to do by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing, or having reason to believe, that it is intended to be used in committing a misdemeanor or felony, is guilty of misdemeanor. Any of the structures mentioned in section four hundred and fifty-nine of this code shall be deemed to be a building within the meaning of this section. [*Amendment, approved March* 3, 1874; *Amendments* 1873–4, 463; *took effect from passage.*]

467. *Having possession of deadly weapons with intent to commit assault.*

SEC. 467. Every person having upon him any deadly weapon with intent to assault another is guilty of a misdemeanor.

CHAPTER IV.

FORGERY AND COUNTERFEITING.

470. *Forgery of wills, conveyances, notes, bonds, etc.*

SEC. 470. Every person who, with intent to defraud another, falsely makes, alters, forges, or counterfeits any charter, letters, patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill, or note, post-note, check, draft, bill of exchange, contract, promissory note, due-bill for the payment of money or property, receipt for money or property, passage-ticket, power of attorney, or any certificate of any share, right, or interest in the stock of any corporation or association, or any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods, or any acquittance, release, or discharge for any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, certificates of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or counterfeits or forges the seal or handwriting of another; or utters, publishes, passes, or attempts to pass, as true and genuine, any of the above-named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person; or who, with intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court, or the return of any officer to any process of any court—is guilty of forgery.

"The definition has been extended to cover cases not included within the definition given by our statutes, Stats. 1850, 229, but which are of equal enormity:" Commissioners' note.

Forgery.—The above section was evidently intended to be sufficiently comprehensive and particular to include every case that could arise. Forgery is defined to be the signing by one without authority, and falsely and with intent to defraud, the name of another to an instrument which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability: *State* v. *Thompson*, 19 Iowa, 299; *State* v. *Pierce*, 8 Id. 231; *Waterman* v. *State*, 67 Ill. 91. Forgery is the false making of any written instrument for the purpose of fraud and deceit: 3 Ch. Crim. L. 1022. The forging of any writing by which a person might be prejudiced is forgery at common law: *State* v. *Kimball*, 50 Me. 409. It is not essential to the crime that the person in whose name the forged instrument purports to be made shall have legal capacity to make it: *State* v. *Eades*, 68 Mo. 150. But an instrument having no validity upon its face is not a subject of forgery: *Abbott* v. *Rose*, 62 Me. 194. The alteration of a check already made is forgery: *People* v. *Brotherton*, 47 Cal. 388; *Wilson* v. *South Park Commissioners*, 70 Ill. 46. And it is no defense that the drawer of the forged check is a fictitious person, nor that he had no funds in the bank on which the check is drawn: *Thompson* v. *State*, 49 Ala. 16. If there are two persons of the same name, and one of them signs that name to notes with the intention that the notes shall be used in trade as the notes of the other, it is forgery: *Barfield* v. *State*, 29 Ga. 127. Where defendant did not himself sign the name to the forged note, but procured an innocent person to sign the name, by falsely representing that he had authority to do so from the person whose name was signed, he

was adjudged guilty: *Gregory* v. *State*, 26 Ohio St. 510. Where one fraudulently executes and issues an instrument purporting on its face to be executed by him as agent of the principal therein named, he is not guilty of forgery, though he have no authority from the principal to execute the instrument: *Mann* v. *People*, 15 Hun, 155; see also *People* v. *Shotwell*, 27 Cal. 394; *People* v. *Frank*, 28 Id. 507; *Fuller* v. *Ferguson*, 26 Id. 546; *Wright* v. *Carillo*, 22 Id. 595; *People* v. *Ah Sam*, 41 Id. 645; *People* v. *Ferris*, 56 Cal. 442; *People* v. *Cummings*, 57 Id. 938.

Uttering of forged instruments.—By the above section, the uttering or passing, as well as the making, etc., of a forged instrument, is declared a forgery: See *People* v. *Ah Woo*, 28 Cal. 205; *People* v. *Tomlinson*, 35 Id. 503; *State* v. *Lane*, 80 N. C. 407; *State* v. *Snow*, 30 La. Ann. 401. The act of uttering the instrument, with knowledge of its fictitious character, and with intent to defraud, are the essential elements of the crime: *Dunn* v. *People*, 4 Col. 126. It is enough if it be offered as genuine, and it is not necessary that it should have been actually received as genuine by the party upon whom the fraud is attempted: *People* v. *Caton*, 25 Mich. 388. The bringing of a suit at law, as counsel, upon a forged note, and recovering judgment, and taking proceedings to enforce the judgment, knowing the note to be a forgery, amounts to uttering a forged note: *Chakoon* v. *Commonwealth*, 20 Gratt. 733.

Forgery of records: See sec. 471.

Pleadings.—Forging, attempting to pass, and passing as genuine a check, if charged in the various counts of an indictment so as to show in each that the same check is referred to, constitute but one crime: *People* v. *Shotwell*, 27 Cal. 400. Though one of the various acts mentioned in the law constitutes the crime, they all do no more than to charge one crime or offense: *People* v. *Frank*, 28 Id. 513. Forms of pleading under the criminal practice act of this state clearly set out in *People* v. *Ah Woo*, Id. 208. If the forged or counterfeit order is in the Chinese language, to set it out in English in the indictment is good: Id., referring to sec. 235, Crim. Prac. Act; *People* v. *Ah Sing*, 17 Cal. 598; *People* v. *Vance*, 21 Id. 403; *People* v. *King*, 27 Id. 507; *People* v. *Littlefield*, 5 Id. 355; *People* v. *Lloyd*, 9 Id. 55; *People* v. *Ybarra*, 17 Id. 166; 2 Whart. Crim. Law, sec. 1466. If the indictment merely sets out an instrument which is a nullity upon its face, without any averment showing it can be made to act injuriously or fraudulently, by reason of matter *aliunde*, no case is made: *People* v. *Tomlinson*, 35 Cal. 507: From the note of the commissioners.

Drunkenness.—Intent being an element of the crime of forgery, evidence of the defendant's drunkenness and of its effect upon him are admissible: *People* v. *Blake*, 3 West Coast Rep. 38.

471. *Making false entries in records or returns.*

SEC. 471. Every person who, with intent to defraud another, makes, forges, or alters any entry in any book of records, or any instrument purporting to be any record or return specified in the preceding section, is guilty of forgery.

Forgery of records: See sec. 470. In the case of *Brown* v. *People*, 86 Ill. 239, it was held that to authorize an indictment and conviction for forgery the instrument alleged to have been forged must be such as if genuine would be effective, and that no indictment can be founded upon an instrument purporting to be a decree of divorce, which on its face does not appear to be a copy of the record.

472. *Forgery of public and corporate seals.*

SEC. 472. Every person who, with intent to defraud another, forges or counterfeits the seal of this state, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this state, or of any other state, government, or country, or who falsely makes, forges, or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeited seal or impression thereof, knowing it to be counterfeited, and willfully conceals the same, is guilty of forgery.

473. *Punishment of forgery.*

SEC. 473. Forgery is punishable by imprisonment in the state prison for not less than one nor more than fourteen years

474. *Forging telegraphic messages.*

SEC. 474. Every person who knowingly and willfully sends by telegraph to any person a false or forged message, purporting to be from such telegraph office, or from any other person, or who willfully delivers or causes to be delivered to any person any such message falsely purporting to have been received by telegraph, or who furnishes or conspires to furnish or causes to be furnished to any agent, operator, or employee, to be sent by telegraph or to be delivered, any such message, knowing the same to be false or forged, with the intent to

deceive, injure, or defraud another, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

475. *Passing or receiving forged notes.*

SEC. 475. Every person who has in his possession, or receives from another person, any forged promissory note or bank bill, or bills, for the payment of money or property, with the intention to pass the same, or to permit, cause, or procure the same to be uttered or passed, with the intention to defraud any person, knowing the same to be forged or counterfeited, or has or keeps in his possession any blank or unfinished note or bank bill made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered or passed, to defraud any person, is punishable by imprisonment in the state prison for not less than one nor more than fourteen years.

Guilty possession of counterfeit notes.—To constitute the crime of possessing forged notes with intent to pass them, the law only requires the guilty possession: *People* v. *Ah Sam*, 41 Cal. 645. An indictment which charges that defendants "willfully, feloniously, and knowingly did have in their possession," etc., sufficiently charges the defendants with knowledge of the spurious character of the money: *People* v. *Stanton*, 39 Id. 698.

476. *Making, passing, or uttering fictitious bills, etc.*

SEC. 476. Every person who makes, passes, utters, or publishes, with intention to defraud any other person, or who, with the like intention, attempts to pass, utter, or publish, or who has in his possession, with like intent to utter, pass, or publish, any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of some bank, corporation, copartnership, or individual, when, in fact, there is no such bank, corporation, copartnership, or individual in existence, knowing the bill, note, check, or instrument in writing to be fictitious, is punishable by imprisonment in the state prison for not less than one nor more than fourteen years.

Fictitious person.—To sustain an indictment under this section, it is necessary that the evidence should show that the name alleged to be forged is that of a fictitious person: *People* v. *Dowd*, 4 Pac. C. L. J. 459.

477. *Counterfeiting coin, bullion, etc.*

SEC. 477. Every person who counterfeits any of the species of gold or silver coin current in this state, or any kind or species of gold-dust, gold or silver bullion, or bars, lumps, pieces, or nuggets, or who sells, passes, or gives in payment such counterfeit coin, dust, bullion, bars, lumps, pieces, or nuggets, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeited, is guilty of counterfeiting.

"This section is framed from section 74 of the crimes and punishment act, and is extended to include the kindred offenses provided for in section 1 of the act in relation to counterfeiting gold-dust, etc.: Stats. 1855, 178; and also to include counterfeiting silver bars, etc.:" Commissioners' note.

Jurisdiction.—The passing, with intent to defraud, of counterfeit money is an offense against the state as well as the United States, and although congress might, perhaps, by appropriate legislation, render the jurisdiction of the national courts exclusive, yet, so long as it does not do so, the state courts will have jurisdiction: *In re Truman*, 44 Mo. 181; *People* v. *White*, 34 Cal. 183; *Fox* v. *State*, 5 How. 410; *Moore* v. *Illinois*, 14 Id. 13. But state courts have no power to punish crimes against

the laws of the United States as such: *People* v. *Kelly*, 38 Cal. 145.

Uttering counterfeit money.—One who sells counterfeit money to another, who knows it to be counterfeit, intending that the other shall put it in circulation as good money, is guilty of uttering or passing counterfeit money, within the meaning of the statute: *United States* v. *Nelson*, 1 Abb. 135. See, generally, *People* v. *Stanton*, 39 Cal. 698; *Leonard* v. *State*, 29 Ohio St. 408; *United States* v. *Howell*, 11 Wall. 432.

478. *Punishment of counterfeiting.*

SEC. 478. Counterfeiting is punishable by imprisonment in the state prison for not less than one nor more than fourteen years.

Evidence tending to prove that defendant had in his possession counterfeit coin for sale, and that he sold such coin to another, is sufficient to warrant a conviction: *People* v. *Farrell*, 30 Cal. 316.

479. *Possessing or receiving counterfeit coin, bullion, etc.*

SEC. 479. Every person who has in his possession, or receives for any other person, any counterfeit gold or silver coin of the species current in this state, or any counterfeit gold-dust, gold or silver bullion or bars, lumps, pieces, or nuggets, with the intention to sell, utter, put off, or pass the same, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeit, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

480. *Making or possessing counterfeit dies or plates.*

SEC. 480. Every person who makes, or knowingly has in his possession, any die, plate, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting coin current in this state, or in counterfeiting gold-dust, gold or silver bars, bullion, lumps, pieces, or nuggets, or in counterfeiting bank notes or bills, is punishable by imprisonment in the state prison not less than one nor more than fourteen years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, must be destroyed.

Jurisdiction: See sec. 477, note.

Evidence.—It is not only necessary to prove the known possession by defendant of counterfeiting tools, but it must also be shown that such possession was with criminal intent: *People* v. *White*, 34 Cal. 183; see *People* v. *Farrell*, 30 Id. 316.

481. *Counterfeiting or forging ticket, check, etc., of railroad company.*

SEC. 481. Every person who counterfeits, forges, or alters any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad company, or by any lessee or manager thereof, designed to entitle the holder to ride in the cars of such company, or who utters, publishes, or puts into circulation, any such counterfeit or altered ticket, check, or order, coupon, receipt for fare, or pass, with intent to defraud any such railroad company, or any lessee thereof, or any other person, is punishable by imprisonment in the state prison, or in the county jail, not exceeding one year, or by fine not exceeding one thousand dollars, or by both such imprisonment and fine. [*New section, approved March* 30, 1874; *Amendments* 1873–4, 433; *took effect July* 1, 1874.]

482. *Restoring canceled ticket, check, etc., of railroad company, or offering the same in payment of fare.*

SEC. 482. Every person who, for the purpose of restoring to its original appearance and nominal value in whole or in part, removes, conceals, fills up, or obliterates the cuts, marks, punch-holes, or other evidence of cancellation, from any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad company, or any lessee or manager thereof, canceled in whole or in

part, with intent to dispose of by sale or gift, or to circulate the same, or with intent to defraud the railroad company, or lessee thereof, or any other person, or who, with like intent to defraud, offers for sale, or in payment of fare on the railroad of the company, such ticket, check, order, coupon, or pass, knowing the same to have been so restored, in whole or in part, is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine. [*New section, approved March* 30, 1874; *Amendments* 1873–4, 433; *took effect July* 1, 1874.]

CHAPTER V.

LARCENY.

484. *Larceny defined.*

SEC. 484. Larceny is the felonious stealing, taking, carrying, leading, or driving away the personal property of another.

Larceny defined: See a general discussion of the subject of larceny in a note to *State* v. *Holmes*, 57 Cal. 271–286. Asportation and intent to steal are necessary elements in the offense of larceny: *People* v. *Murphy*, 47 Id. 103; *People* v. *Stone*, 16 Id. 369; *Scott* v. *Harbor*, 18 Id. 704; *People* v. *Smith*, 15 Id. 408. The crime consists in the felonious and fraudulent taking of property with intent to deprive the owner thereof, even though the defendant did not intend to convert the property to his own use: *People* v. *Juarez*, 28 Id. 380. The crime is not committed unless the accused acted feloniously; and if the court in defining larceny omit the word "felonious," it will be error: *People* v. *Cheong Foon Ark*, 61 Id. 527. A man may steal his own property, if, by taking it, his intent be to charge a bailee with the property: *People* v. *Thompson*, 34 Id. 671; *People* v. *Stone*, 16 Id. 369. Where the bailee of property obtains possession of it from the owner with the intent to steal it, and carries out that intent, he is guilty of larceny: *People v. Smith*, 23 Id. 280; see *People* v. *Poggi*, 19 Id. 600. The felonious intent at the time of the taking is the essence of the crime: *People* v. *Jersey*, 18 Id. 337; but see *People* v. *Pico*, 62 Id. 50, where a charge to the jury that the felonious intention need not exist at the time of the first taking, if afterward formed and acted upon, was upheld; and compare with *People* v. *Salorse*, Id. 139. One who does not participate in the larceny, or have any knowledge of it, but afterward receives the stolen property into his possession, does not thereby become guilty of larceny: *People* v. *Maxwell*, 24 Id. 14.

Jurisdiction.—When property stolen in one county has been brought into another the jurisdiction of the offense is in either county: See sec. 786, note; *People* v. *Mellon*, 40 Cal. 648; *State* v. *Brown*, 8 Nev. 208; see *People* v. *Valenzuella*, 6 Pac. C. L. J. 561.

Indictment.—An indictment for larceny which charges that defendant "did feloniously, willfully, and unlawfully, and with force and arms, steal, take, and carry, lead, and drive away," etc., contains a sufficient statement of the intent with which the taking was done: *People* v. *Brown*, 27 Cal. 500. It is sufficient to state the ownership of the stolen property with the same particularity that would be required in a pleading in a civil action: *People* v. *Ah Sing*, 19 Id. 598; but see *People* v. *Schwartz*, 32 Id. 160; *People* v. *Bogart*, 36 Id. 245. An indictment which charges the defendant with larceny of several articles of personal property, and names one sum as the value of all, but does not give the separate value of each article, contains a sufficient statement of the value of the property stolen: *People* v. *Robles*, 34 Id. 591. In specifying the value, the information need not aver it to be "in current coin of the United States:" *People* v. *Righetti*, 4 West Coast Rep. 606. In *People* v. *Bogart*, 36 Cal. 245, it was said to be proper to join two counts in the indictment, one charging a felonious taking, and the other a felonious conversion. The soundness of such decision may, however, well be questioned. Charging a person with the crime of "larcey" is not a sufficient designation of this offense. No such crime as "larcey" exists in this state: *People* v. *St. Clair*, 55 Id. 524. Other decisions relative to indictments for larceny are: *People* v. *Littlefield*, 5 Id. 355; *People* v. *Smith*, 15 Id. 408; S. C., 23 Id. 280; *People* v. *Jim Ti*, 32 Id. 60; *People* v. *Townsley*, 39 Id. 405; *People* v. *Strong*, 46 Id. 302. An information charging defendant with stealing "a certain hog," the property of one A. L., was held sufficient, a particular description of the hog not being necessary: *People* v. *Stanford*, 64 Id. 27, citing *People* v. *Salazar*, 6 Pac. C. L. J. 569. In *People* v. *O'Brien*, 64 Cal. 53, there was held to be an immaterial defect in the concluding words of the indictment.

Larceny and embezzlement—Distinction.—The chief distinction between larceny and embezzlement is that in the case of embezzlement the guilty party has possession of the property at the time of the commission of the offense, while in the case of larceny the taking of the property constitutes one of the elements of the offense: *People* v. *Belden*, 37 Cal. 51; *People* v. *Abbott*, 53 Id. 284; *People* v. *Jersey*, 18 Id. 337; *People* v. *Smith*, 23 Id. 280; *People* v. *Bogart*, 36 Id. 245; *People* v. *Dalton*, 15 Wend. 581; *People* v. *Salorse*, 62 Id. 139; and see *infra* herein.

Larceny and robbery.—In *People* v. *Jones*, 53 Cal. 58, and *People* v. *Nelson*, 56 Id. 77, it was decided that since every indictment for robbery must, if sufficient, necessarily aver every fact necessary to constitute larceny, the jury may find the defendant guilty of larceny,

though the offense charged in the indictment be robbery.

Robbery, larceny, extortion, embezzlement, distinguished.—"Four of the crimes affecting property require to be somewhat carefully distinguished: robbery, larceny, extortion, and embezzlement. The leading distinctions between these may be briefly stated thus: All four include the criminal acquisition of the property of another. In robbery this is accomplished by means of force or fear, and by overcoming or disregarding the will of the rightful possessor. There is a taking of property from another against his consent; the physical power to resist being overcome by force, or what is equivalent in law, the moral power to refuse being prostrated by fear. In larceny there is still a taking; but it is accomplished by fraud or stealth, as by the New York section as specified in the text of section 484, which includes fraud or stealth; the property is taken not against the consent of the owner, but without it. In extortion there is again a taking. Now this is with the consent of the party injured; but it is a consent induced by threats, or under color of some official right. In embezzlement there is no taking in the technical sense; that is, no taking from the possession of another. The offender being in possession of the property in virtue of some trust, which the law deems worthy of special sanction, applies it by fraud or stealth, or feloneously steals, takes, carries, leads, or drives it away to his own use, or appropriates it to his own use, and deprives the owner thereof. Thus extortion partakes in an inferior degree of the nature of robbery, and embezzlement shares that of larceny. In larceny it is not necessary that the property taken should be strictly the property of another person. A man may be guilty of stealing his own property, when done with intent to charge another person with the value of it, *e. g.*, where property, which has been levied upon, is stolen from the officer by the general owner:" From commissioners' note.

Embezzlement: Sec. 503, 508.

Robbery: Sec. 211, note.

Evidence.—The possession of stolen property, although a circumstance to be considered in determining the guilt of defendant is not alone sufficient to convict: *People* v. *Beaver*, 49 Cal. 57; *People* v. *Getty*, Id. 581; *People* v. *Gill*, 45 Id. 285; *People* v. *Gassaway*, 23 Id. 51; *People* v. *Antonio*, 27 Id. 404; *People* v. *Ah Ki*, 20 Id. 177; *People* v. *Chambers*, 18 Id. 382; *People* v. *Kelly*, 28 Id. 423; sec. 1102, note. A confession, voluntarily made, is admissible in evidence, even though on a prior occasion there had been given a promise of favor, not acted upon, and which had been made to induce the accused to confess: *People* v. *Jim Ti*, 32 Id. 60. An attempt to escape is also a circumstance which the jury may consider in determining the guilt or innocence of defendant: *People* v. *Strong*, 46 Id. 302. And so is a concealment of the stolen property: *People* v. *Murphy*, 47 Id. 103. Proof that the person alleged to be the owner of the stolen property had a special property, or that he held it to do some act upon it, or for the purpose of carriage, or in trust for the benefit of another, will support the allegation of ownership: *People* v. *Nelson*, 56 Id. 77; *State* v. *Somerville*, 21 Me. 18; *Yates* v. *State*, 10 Yerg. 549; see *People* v. *Smallman*, 55 Cal. 185, for various questions of evidence and practice.

485. *Larceny of lost property.*

SEC. 485. One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and restore the property to him, is guilty of larceny.

Lost and unclaimed property: See Pol. Code, secs. 3136-3157; Civ. Code, secs. 1864-1872; *People* v. *Anderson*, 14 Johns. 294; *State* v. *McCann*, 19 Mo. 249; *Tanner's Case*, 14 Gratt. 635. This section relates to property lost (in the apparent possession of no one) and found: *People* v. *Valenzuella*, 6 Pac. C. L. J. 561.

486. *Grand and petit larceny.*

SEC. 486. Larceny is divided into two degrees, the first of which is termed grand larceny; the second, petit larceny.

Degree.—Charging the accused with grand larceny, and a verdict of "guilty as charged," is a sufficient finding of the degree: *People* v. *Whitely*, 64 Cal. 211.

487. *Grand larceny defined.*

SEC. 487. Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of a value exceeding fifty dollars;

2. When the property is taken from the person of another;

3. When the property taken is a horse, mare, gelding, cow, steer, bull, calf, mule, jack, jenny, goat, sheep, or hog.

Larceny defined: See sec. 484.

Subd. 1. Value must be exceeding fifty dollars: *People* v. *Marshall*, 59 Cal. 391.

Subd. 2. Taking from the person is larceny, irrespective of the amount: *People* v. *Nelson*, 56 Cal. 77, 80; *People* v. *Gannon*, 61 Id. 476.

Subd. 3. Animals.—Horse: *People* v. *Pico*,

62 Cal. 52; *People* v. *Salorse*, Id. 139; hog: *People* v. *Stanford*, 64 Id. 27; "cattle:" *People* v. *Barnes*, 1 West Coast Rep. 772.

Indictment.—In ordinary cases the distinction between grand and petit larceny is the value of the property stolen, and the value should therefore be stated in the indictment. In the cases mentioned in subdivision 3, however, the element of value does not enter into the definition of the offense. In such cases, therefore, it is not necessary to state the value in the indictment, or prove it at the trial: *People* v. *Townsley*, 39 Cal. 405; *People* v. *Leehey*, 4 Pac. C. L. J. 75; see sec. 484, note.

488. *Petit larceny.*

SEC. 488. Larceny in other cases is petit larceny.

Petit larceny, jurisdiction of.—The superior courts have lost jurisdiction of petit larceny since the legislature, by section 115 of the Code of Civil Procedure, has conferred on the justice's court jurisdiction of that, together with other misdemeanors: *Ex parte Wallingford*, 60 Cal. 103.

489. *Punishment of grand larceny.*

SEC. 489. Grand larceny is punishable by imprisonment in the state prison for not less than one nor more than ten years.

Imprisonment in the house of correction.—Under the provisions of the act of 1877–8, made applicable to the superior court under the new constitution, that court may sentence a defendant convicted of grand larceny to the house of correction instead of to the state prison: *Ex parte Flood*, 64 Cal. 251.

490. *Punishment of petit larceny.*

SEC. 490. Petit larceny is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or both.

491. *Dogs property.*

SEC. 491. Dogs are property, and of the value of one dollar each, within the meaning of the terms "property" and "value," as used in this chapter.

492. *Larceny of written instruments.*

SEC. 492. If the thing stolen consists of any evidence of debt, or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, is the value of the thing stolen.

"Stats. 1856, 219, sec. 9. Lottery-tickets, being prohibited to be sold or issued in this state, are, of course, not included in this section as property:" Commissioners' note.

493. *Value of passage-tickets.*

SEC. 493. If the thing stolen is any ticket or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or vessel or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance is the value of such ticket, paper, or writing.

494. *Written instruments completed but not delivered.*

SEC. 494. All the provisions of this chapter apply where the property taken is an instrument for the payment of money, evidence of debt, public security, or passage-ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

Embezzlement of evidence of debt: Sec. 510.

495. *Severing and removing part of realty declared larceny.*

SEC. 495. The provisions of this chapter apply where the thing taken is any fixture or part of the realty, and if severed at the time of the taking, in the

same manner as if the thing had been severed by another person at some previous time.

An Act to more fully define the crime of larceny.

[Approved March 6, 1872; 1871-2, 282.]

Severing and conversion of real estate.

SECTION 1. Every person who shall convert any manner of real estate of the value of fifty dollars and upwards into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of grand larceny, and, upon conviction thereof, shall be punishable by imprisonment in the state prison for any term not less than one year nor more than fourteen years.

SEC. 2. Every person who shall convert any manner of real estate of the value of under fifty dollars into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of petit larceny, and upon conviction thereof shall be punishable by imprisonment in the county jail for a period not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

An Act supplementary to an act entitled "An act concerning crimes and punishments," passed April 16, 1850.

[Approved March 20, 1872; 1871-2, 435.]

Stealing of gold-dust, amalgam, or quicksilver.

SECTION 1. Every person who shall feloniously steal, take, and carry away, or attempt to take, steal, and carry from any mining claim, tunnel, sluice, undercurrent, riffle-box, or sulphurate machine, any gold-dust, amalgam, or quicksilver, the property of another, shall be deemed guilty of grand larceny, and upon conviction thereof shall be punished by imprisonment in the state prison for any term of not less than one year nor more than fourteen years.

SEC. 2. This act shall be in force from and after its passage.

496. *Buying or receiving stolen goods.*

SEC. 496. Every person who for his own gain, or to prevent the owner from again possessing his property, buys or receives any personal property, knowing the same to have been stolen, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding six months, or by both; and it shall be presumptive evidence that such property was stolen, if the same consists of jewelry, silver, or plated ware, or articles of personal ornament, if purchased or received from a person under the age of eighteen, unless said property is sold by said minor at a fixed place of business carried on by said minor or his employer. [*Amendment, approved February* 28, 1874; *Amendments* 1873–4, 464; *took effect immediately.*]

"This section is founded upon section 63 of the crimes and punishment act, Stats. 1850, 229, which contained a provision that 'every such person may be tried, convicted, and punished, as well before as after the trial of his principal,' which is transferred to part 2 of this code 'of criminal procedure:' See secs. 971, 972, *post:*" Commissioners' note.

Receiving stolen goods is a distinct and specific offense under the above section. Where the evidence proved that the defendant was not present in the county at the time of the theft, and did not participate in the larceny, but subsequently, with guilty knowledge that it was stolen, received the stolen property, and aided in disposing of it for the joint benefit of himself and the perpetrator of the larceny, it was held that he could not be convicted either of larceny or of being an accessary after the fact, his offense being that of receiving stolen goods knowing them to have been stolen: *People* v. *Stakem*, 40 Cal. 599. This section is intended to provide for the punishment of the receivers of stolen goods, in cases where it might be impossible to identify with certainty the thieves, as in cases of professional receivers. An allegation in the indictment of the name of the thief is unnecessary: *People* v. *Avila*, 43 Id. 196; see also *People* v. *Hawkins*, 34 Id. 181.

497. *Larceny committed and stolen property received out of state.*

SEC. 497. Every person who, in another state or country, steals the property of another, or receives such property knowing it to have been stolen, and brings the same into this state, may be convicted and punished in the same manner as if such larceny or receiving had been committed in this state.

498. *Stealing gas.*

SEC. 498. Every person who, with intent to injure or defraud, makes or causes to be made any pipe, tube, or other instrument, and connects the same, or causes it to be connected, with any main, service-pipe, or other pipe for con-

ducting or supplying illuminating gas, in such manner as to supply illuminating gas to any burner or orifice, by or at which illuminating gas is consumed, around or without passing through the meter provided for the measuring and registering the quantity consumed, or in any other manner so as to evade payment therefor, and every person who, with like intent, injures or alters any gas-meter, or obstructs its action, is guilty of a misdemeanor.

"Founded upon sections 1 and 2 of an act for the protection of gaslight companies, Stats. 1859, 309: *Regina* v. *White*, 6 Cox C. C. 213:" Commissioners' note.

499. *Stealing water.*

SEC. 499. Every person who, with intent to injure or defraud, connects or causes to be connected, any pipe, tube, or other instrument, with any main, service-pipe, or other pipe, or conduit or flume for conducting water, for the purpose of taking water from such main, service-pipe, conduit, or flume, without the knowledge of the owner thereof, and with intent to evade payment therefor, is guilty of a misdemeanor.

Sufficient complaint in the police court under this section, see *Ex parte Helbing*, 4 West Coast Rep. 687.

500. *Larceny of goods saved from fire in San Francisco.*

SEC. 500. Every person who, in the city and county of San Francisco, saves from fire, or from a building endangered by fire, any property, and for two days thereafter corruptly neglects to notify the owner or fire marshal thereof, is punishable by imprisonment in the state prison for not less than one nor more than ten years.

501. *Purchasing or receiving in pledge junk, etc., of minors, misdemeanor.*

SEC. 501. Every person who purchases or receives in pledge, or by way of mortgage, from any person under the age of sixteen years, any junk, metal, mechanical tools, or implements, is guilty of a misdemeanor. [*New section, approved March* 28, 1872; 1871–2, 684; *took effect with the code.*]

502. *Applies sections three hundred and thirty-nine, three hundred and forty-two, and three hundred and forty-three to junk-dealers, etc.*

SEC. 502. Sections three hundred and thirty-nine, three hundred and forty-two, and three hundred and forty-three of the Penal Code are applicable to persons carrying on the business of junk-dealers, and apply to their transactions of purchase and sale as well as to those of pledge or mortgage. [*New section, approved March* 28, 1872; 1871–2, 684; *took effect with the code.*]

"Sections 501 and 502 were added to the Penal Code by Stats. 1872, 684, approved March 28th. The sections referred to in section 502 relate to registrations, etc., by pawnbrokers:" Commissioners' note.

CHAPTER VI.

EMBEZZLEMENT.

503. *Embezzlement defined.*

SEC. 503. Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted.

Embezzlement and larceny distinguished: See sec. 484, note; *People* v. *Salorse*, 62 Cal. 139; *Commonwealth* v. *Berry*, 99 Mass. 428.

Extortion: See sec. 518, note.

Embezzlement.—In order to convict one as agent with having embezzled the property of his principal, four distinct propositions of fact are to be made out: 1. That he was such agent; 2. That he received the property of his principal; 3. That he received it in the course of his employment; and 4. That he converted it to his own use, with intent to steal: *Ex parte Hedley*, 31 Cal. 108; *Griffin* v. *State*, 4 Tex. App. 390. On subject of embezzlement, see *People* v. *Hust*, 49 Cal. 653; *People* v. *De la Guerra*, 31 Id. 416; *People* v. *Belden*, 37 Id. 51; *People* v. *Murphy*, 51 Id. 376; *Kribs* v.

People, 82 Ill. 425; *Commonwealth* v. *Foster*, 107 Mass. 221. Money received by a clerk from collections on bills, intrusted to him to collect by his employer, is money intrusted to him: *Ex parte Ricord*, 11 Nev. 287. The disposal of collateral security by the holder before the debt is due, which it secures, has been held not to be embezzlement: *Commonwealth* v. *Butterick*, 100 Mass. 1. Where one places his money in the hands of another, to be by him loaned at a stipulated rate of interest, relying upon the honesty of the one receiving it for its safe return, it is not embezzlement if the party fail to properly account for the money so received: *Kribs* v. *People*, 82 Ill. 425. A fraudulent conversion by one partner of property belonging to the firm, or by one of two joint owners of property, does not constitute this crime: *Napoleon* v. *State*, 3 Tex. App. 522; *State* v. *Kent*, 22 Minn. 41. Mere conversion, unless accompanied by a criminal intent, is not punishable: *State* v. *Reilly*, 4 Mo. App. 392. Shares of stock are the subject of embezzlement: *People* v. *Williams*, 60 Cal. 1.

Indictment.—An indictment for embezzlement should give the description of the property embezzled with the same particularity as is required in an indictment for larceny: *People* v. *Cox*, 40 Cal. 275; *People* v. *Cohen*, 8 Id. 42. The indictment may contain two counts, one charging larceny and the other embezzlement, when it is not certain which specific offense will be proved: *People* v. *Bogart*, 36 Id. 245; see also *People* v. *Doss*, 39 Id. 428.

504. *When officers of state or any association guilty of embezzlement.*

SEC. 504. Every officer of this state, or of any county, city, city and county, or other municipal corporation or subdivision thereof, and every deputy, clerk, or servant of any such officer, and every officer, director, trustee, clerk, servant, or agent of any association, society, or corporation (public or private), who fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement. [*Amendment, approved April* 6, 1880; *Amendments* 1880, 8 (*Ban. ed.* 129); *took effect immediately.*]

See sec. 503, note; *State* v. *Brooks*, 42 Tex. 62.

505. *When carrier or other person having property for transportation for hire guilty of embezzlement.*

SEC. 505. Every carrier or other person having under his control personal property for the purpose of transportation for hire, who fraudulently appropriates it to any use or purpose inconsistent with the safe-keeping of such property and its transportation according to his trust, is guilty of embezzlement, whether he has broken the package in which such property is contained, or has otherwise separated the items thereof, or not.

Carrier for hire.—In the case of *State* v. *Stoller*, 38 Iowa, 321, under a section corresponding to the above, it was held that an indictment for embezzlement against defendant, as a carrier for hire, could not be sustained when it appeared that the property had simply been stored with him, and converted by him to his own use.

506. *When trustee, banker, etc., guilty of embezzlement.*

SEC. 506. Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise intrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

507. *When bailee, tenant, or lodger guilty of embezzlement.*

SEC. 507. Every person intrusted with any property as bailee, tenant, or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, is guilty of embezzlement.

Embezzlement: See *People* v. *Poggi*, 19 Cal. 600; *People* v. *Cohen*, 8 Id. 42; *People* v. *Garcia*, 25 Id. 531; *People* v. *Smith*, 23 Id. 280; *People* v. *Murphy*, 51 Id. 376. And for other cases of embezzlement by bailee, see *People* v. *Salorse*, 62 Id. 139; *People* v. *Flores*, 64 Id. 426.

508. *When clerk, agent, or servant guilty of embezzlement.*

SEC. 508. Every clerk, agent, or servant of any person who fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of another which has come into his control or care by virtue of his employment as such clerk, agent, or servant, is guilty of embezzlement.

Embezzlement: See secs. 503, 507, and notes.

509. *Distinct act of taking.*

SEC. 509. A distinct act of taking is not necessary to constitute embezzlement.

Embezzlement and larceny distinguished: See sec. 484.

510. *Evidence of debt undelivered may be subject of embezzlement.*

SEC. 510. Any evidence of debt negotiable by delivery only, and actually executed, is the subject of embezzlement, whether it has been delivered or issued as a valid instrument or not.

See also sec. 494, *ante.*

511. *Claim of title a ground of defense.*

SEC. 511. Upon any indictment for embezzlement, it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith, even though such claim is untenable. But this provision does not excuse the unlawful retention of the property of another to offset or pay demands held against him.

512. *Intent to restore property no defense.*

SEC. 512. The fact that the accused intended to restore the property embezzled is no ground of defense or of mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, charging the commission of the offense.

513. *Actual restoration ground for mitigation of punishment.*

SEC. 513. Whenever, prior to any information laid before a magistrate, charging the commission of embezzlement, the person accused voluntarily and actually restored or tendered restoration of the property alleged to have been embezzled, or any part thereof, such fact is not a ground of defense, but it authorizes the court to mitigate punishment, in its discretion.

Payment by embezzler no bar to prosecution.—In *Fagnan* v. *Knox*, 66 N. Y. 525, it was said that if money was embezzled the party injured had a right to settle with the embezzler, as for a debt upon an implied contract, and that such settlement was no bar to a criminal prosecution: See sec. 9, note.

Compromise by permission of court discharges prisoner, when: Sec. 1378, *post.*

514. *Punishment for embezzlement.*

SEC. 514. Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled; and where the property embezzled is an evidence of debt or right of action, the sum due upon it or secured to be paid by it shall be taken as its value; provided, that if the embezzlement or defalcation be of the public funds of the United States, or of this state, or of any county, city, and county, or municipality within this state, the offense is a felony, and shall be punishable by imprisonment in the state prison not less than one year nor more than ten years; and the person so convicted shall be ineligible thereafter to any office of honor, trust, or profit under this state. [*Amendment, approved April* 6, 1880; *Amendments* 1880, 8 (*Ban. ed.* 129); *took effect immediately.*]

Embezzlement of public funds.—"No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any state, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this state, and the legislature shall provide by law for the punishment of embezzlement or defalcation as a felony:" Const. Cal., art. 4, sec. 21.

CHAPTER VII.

EXTORTION.

518. *Extortion defined.*

SEC. 518. Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right.

Extortion.—In a general sense this term includes any oppression under color of right. The word comes from the Latin *extorquere*, to wring or wrest from. Burrill defines it to be the unlawful or violent wringing of money, or money's worth, from any man; a taking more than is due by color or pretense of right: Burrill's Law Dict., tit. Extortion. To constitute the offense, there must be the receipt of money or something of value: *Rex* v. *Burdett*, 1 Ld. Raym. 148; *State* v. *Stotts*, 5 Blackf. 460. A mere agreement to pay fees not due will not constitute the offense. The taking of a promissory note for fees not due is not extortion: *Commonwealth* v. *Cony*, 2 Mass. 523; *Commonwealth* v. *Pease*, 16 Id. 91. The taking of illegal fees by a public officer may often result from mistake, and where this is the case and there is no corrupt motive, no extortion has been committed: 2 Whart. Crim. L., 8th ed., sec. 1576; *State* ads. *Cutter*, 36 N. J. L. 125; but if the bare act of taking illegal fees is made indictable, then the defendant may be convicted, no matter what may have been his motive: 2 Whart. Crim. L., 8th ed., sec. 1576; see sec. 107 of an act concerning crimes and punishments, passed April 16, 1859, Sess. Laws, 1850, 242. In *Ryan* v. *Johnson*, 5 Cal. 86, the section of the act just cited, defining official extortion, was held constitutional.

In note 3, section 484, the distinction between extortion, larceny, robbery, and embezzlement is considered.

Robbery: Sec. 211, note.
Larceny: Sec. 584, note.
Embezzlement: Sec. 503, note.

519. *What threats may constitute extortion.*

SEC. 519. Fear, such as will constitute extortion, may be induced by a threat, either:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his, or member of his family; or,

2. To accuse him, or any relative of his, or member of his family, of any crime; or,

3. To expose or impute to him or them any deformity or disgrace; or,

4. To expose any secret affecting him or them.

Extortion.—Subd. 1. Injury to property: See sec. 523. The right to take and prosecute an appeal is property within the meaning of this chapter: *People* v. *Cadman*, 57 Cal. 562.

Subd. 3. Exposing one's disgrace.—For case in point, see *People* v. *Cadman*, 57 Cal. 562.

520. *Punishment of extortion in certain cases.*

SEC. 520. Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force or any threat, such as is mentioned in the preceding section, is punishable by imprisonment in the state prison not exceeding five years.

Robbery: Sec. 211, and note.

521. *Punishment of extortion committed under color of official right.*

SEC. 521. Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed in this code, is guilty of a misdemeanor.

522. *Obtaining signature by means of threats.*

SEC. 522. Every person who, by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge, or right

of action created, is punishable in the same manner as if the actual delivery of such debt, demand, charge, or right of action were obtained.

523. *Sending threatening letters with intent to extort money, etc.*

SEC. 523. Every person who, with intent to extort any money or other property from another, sends or delivers to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat such as is specified in section five hundred and nineteen, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

Offense, when complete: Sec. 660.

Threatening letters.—In England and most of the United States statutes have been adopted making the sending of letters containing threats, with intent to extort money or other property, an indictable offense. Under such statutes the person threatened must be averred and proved: *Rex* v. *Dunkley*, 1 Moo. C. C. 90; and so must the fact of sending: *Regina* v. *Jones*, 2 Cox C. C. 434; *Rex* v. *Paddle*, Russ. & Ry. 484. The sending, however, may be inferred from the proof of other facts. In *Rex* v. *Wagstaff*, Russ. & Ry. 398, it was held that the dropping of a letter in a man's way, in order that he might pick it up, was a sending of it. So the fastening of a threatening letter on a gate in a public highway is some evidence to go to a jury to prove a sending: *Regina* v. *Williams*, 1 Cox C. C. 16: see *Regina* v. *Grimwade*, Id. 67; 2 East P. C. 1120. It must also appear that threats were intended: 2 Whart. Crim. L., 8th ed., sec. 1664. A letter that is ambiguous may be explained by parol proof of extraneous facts as well as by declarations of the writer: Id., sec. 1665. The meaning of the letter, if ambiguous, must be determined by the jury, though whether a crime is threatened by a letter that is not ambiguous is for the court: Id.; *Rex* v. *Tucker*, 1 Moo. C. C. 134; *Regina* v. *Hendy*, 4 Cox C. C. 243; *Regina* v. *Menage*, 3 F. & F. 310; *Regina* v. *Goghlan*, 4 Id. 316; *Regina* v. *Braynell*, 4 Cox C. C. 402; *State* v. *Hollyway*, 41 Iowa, 200; *Longley* v. *State*, 43 Tex. 490. It is not necessary that the matter set forth in the letter should be libelous to constitute the offense: *Regina* v. *Coghlan*, 4 F. & F. 316. The intent to extort may be implied from the circumstances, and no express demand of money is necessary. But if it appears that the object of the letter is to compel the payment of accounts honestly believed to be due, there is no evidence of an intent to extort: Id.

Property.—Right to appeal is property: *People* v. *Cadman*, 57 Cal. 562.

Subscribed or not.—It is not necessary to allege and prove that the accused wrote or subscribed the letter complained of. The offense is complete when he sends it: *People* v. *Cadman*, 57 Cal. 562.

Venue may be laid in the place of the reception of the letter: 1 Whart. Crim. L., 8th ed., sec. 288; 2 Id., secs. 1206, 1666; *Rex* v. *Gerwood*, 2 East P. C. 1120; *Rex* v. *Essex*, Id. 1125; *People* v. *Griffin*, 2 Barb. 427.

524. *Attempts to extort money or property by means of verbal threats.*

SEC. 524. Every person who unsuccessfully attempts, by means of any verbal threat, such as is specified in section five hundred and nineteen, to extort money or other property from another, is guilty of a misdemeanor.

Entry of judgment not until twenty days after the sentence and entry thereof in the minute-book will not entitle the convicted to be discharged on *habeas corpus*, the court having had jurisdiction of the person and of the cause: *Ex parte Raye*, 63 Cal. 491.

525. *Officers of railroad companies making overcharges.*

SEC. 525. Every officer, agent, or employee of a railroad company who asks or receives a greater sum than is allowed by law for the carriage of passengers or freight is guilty of a misdemeanor.

CHAPTER VIII.

FALSE PERSONATION AND CHEATS.

528. *Marrying under false personation.*

SEC. 528. Every person who falsely personates another, and in such assumed character marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of such other, is guilty of a felony.

"Such marriage is voidable: Civ. Code, sec. 58. The word 'personate' alone, in its ordinary definition, would probably include all that the prefix 'falsely' imports. Still it is used in the penal code of New York, section 620. Our statute was 'falsely represent or

personate.' Here the prefix to 'represent' was necessary. The expression of the text, however, being similarly used in different states, will enable the courts to have less, if any, trouble in expounding it. Bouvier in his Law Dict., tit. Personate, says: 'At common law, personating another for the purpose of fraud was only a misdemeanor.' The text properly regarding a fraud in the solemn engagement of the marital relation as of a very grave character, affixes to it a correspondingly heavy punishment, greater even than the New York code:" Commissioners' note.

529. *Falsely personating another in other cases.*

SEC. 529. Every person who falsely personates another, and in such assumed character, either:

1. Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety; or,

2. Verifies, publishes, acknowledges, or proves, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, and used as true; or,

3. Does any other act whereby, if it were done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person;

—Is punishable by imprisonment in the county jail not exceeding two years, or by fine not exceeding five thousand dollars.

False personation.—At common law, a false personation, by which one obtains credit from the public at large, is an indictable offense: 2 Whart. Crim. L., 8th ed., sec. 1124.

530. *Receiving property in a false character.*

SEC. 530. Every person who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person, or to deprive the true owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

See section 529, note. The offense described in the above section, though punishable in the same manner, does not constitute larceny: 1 Whart. Crim. L., 8th ed., sec. 888.

531. *Fraudulent conveyances.*

SEC. 531. Every person who is a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract, or conveyance, had, made, or contrived with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands; or who, being a party as aforesaid, at any time wittingly and willingly puts in, uses, avows, maintains, justifies, or defends the same, or any of them, as true, and done, had, or made in good faith, or upon good consideration, or aliens, assigns, or sells any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him or them conveyed as aforesaid, or any part thereof—is guilty of a misdemeanor.

Fraud.—Actual fraud is defined by section 1572, and constructive fraud by section 1573, Civ. Code.

Fraudulent conveyances: Civ. Code, secs. 3439–3442.

532. *Obtaining money by false pretenses and by false reports of wealth, etc.*

SEC. 532. Every person who knowingly and designedly, by false or fraudulent representation or pretenses, defrauds any other person of money or property, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby

fraudulently gets into possession of money or property, is punishable by imprisonment in the county jail not exceeding one year, and by fine not exceeding three times the value of the money or property so obtained.

False pretenses.—The essence of this offense is that the false pretense should relate to a past event, or to a fact having a present existence, and not to something to happen in the future. And the prosecutor must believe the pretense to be true, and, confiding in its truth, must part with his money or property: *State* v. *Evers*, 49 Mo. 542; *In re Snyder*, 17 Kan. 542; *Johnson* v. *State*, 41 Tex. 65; *Ryan* v. *State*, 45 Ga. 128. Both the inducement and the fraudulent purpose are facts to be proved, not presumed: *Scott* v. *People*, 62 Barb. 62. In the cases of *People* v. *Thomas*, 3 Hill (N. Y.), 169, and *State* v. *Hurst*, 11 W. Va. 54, it is said that to make false representations, whereby one is induced to pay his debt, is not punishable. See also *People* v. *Highie*, 66 Barb. 131; *Tatum* v. *State*, 58 Ga. 408; *Cheek* v. *State*, 1 Coldw. 172; *People* v. *Clough*, 17 Wend. 351.

Sufficiency of indictment under this section: See *People* v. *Jordan*, 4 West Coast Rep. 138.

533. *Selling land twice.*

SEC. 533. Every person who, after once selling, bartering, or disposing of any tract of land or town lot, or after executing any bond or agreement for the sale of any land or town lot, again willfully and with intent to defraud previous or subsequent purchasers sells, barters, or disposes of the same tract of land or town lot, or any part thereof, or willfully and with intent to defraud previous or subsequent purchasers executes any bond or agreement to sell, barter, or dispose of the same land or lot, or any part thereof, to any other person for a valuable consideration, is punishable by imprisonment in the state prison not less than one nor more than ten years.

Selling land twice.—In *People* v. *Garnett*, 35 Cal. 470, it was held that to justify a conviction of the offense of selling land twice it was necessary to charge in the indictment and prove at the trial: 1. The first and second sales; 2. That the second sale of the land was for a valuable consideration, and was made fraudulently; that is, with intent to defraud either the first or second purchaser. In *People* v. *Cox*, 45 Id. 342, it was decided that the giving of a mortgage upon land by one who had already conveyed his title to another by deed was not disposing of land twice, within the meaning of the section.

"**This section is founded on section** 132 of the crimes and punishment act of 1850. The words "knowingly and fraudulently" are stricken out, and the phrase "willfully and with intent to defraud previous or subsequent purchasers" inserted in lieu thereof. Section 132 was evidently intended to embody the provisions of the statute of 27 Eliz., c. 4, which made it a criminal offense for any person to sell or convey land and the like with intent to defraud previous or subsequent purchasers, and proceeded upon the theory that either of the purchasers may be defrauded by the second sale. The substitution of the word "fraudulently" for the precise words of the English statute, which are here restored to the section, rendered section 132 obscure, and made it uncertain as to whether the fraud necessary to constitute the offense must move against previous or subsequent purchasers, whilst, if directed against either, the case fell within the mischief the statute intended to guard against. This want of precision in section 132 has already been the subject of judicial observation in this state: *People* v. *Garnett*, 35 Cal. 470, and it has been held, Chief Justice Rhodes expressing no opinion, that the section must receive the same construction as the English statute cited; therefore, it was manifestly proper that the language of the latter statute should be restored:" Commissioners' note.

534. *Married person selling lands under false representations.*

SEC. 534. Every married person who falsely and fraudulently represents himself or herself as competent to sell or mortgage any real estate, to the validity of which sale or mortgage the assent or concurrence of his wife or her husband is necessary, and under such representations willfully conveys or mortgages the same, is guilty of felony.

535. *Mock auction.*

SEC. 535. Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property, by auction, or by any of the practices known as mock-auctions, is punishable by imprisonment in the state prison not exceeding three years, or in the county jail not exceeding one year, or by fine not exceed-

ing one thousand dollars, or by both such fine and imprisonment; and in addition thereto, forfeits any license he may hold as auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this state.

536. *False statement concerning prices of consignments—Misdemeanor.*

SEC. 536. Every commission merchant, broker, agent, factor, or consignee who shall willfully and corruptly make, or cause to be made, to the principal or consignor of such commission merchant, agent, broker, factor, or consignee, a false statement concerning the price obtained for or the quality or quantity of any property consigned or intrusted to such commission merchant, agent, broker, factor, or consignee, for sale, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or by both such fine and imprisonment. [*New section, approved April* 15, 1880; *Amendments* 1880, 37 (*Ban. ed.* 223); *took effect immediately.*]

CHAPTER IX.

FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS.

539. *Captain or other officer willfully destroying vessel, etc.*

SEC. 539. Every captain or other officer or person in command or charge of any vessel who, within this state, willfully wrecks, sinks, or otherwise injures or destroys such vessel, or any cargo in such vessel, or willfully permits the same to be wrecked, sunk, or otherwise injured or destroyed, with intent to prejudice or defraud any other person, is punishable by imprisonment in the state prison not less than three years.

"Injuring or destroying vessels upon the high seas is provided for by various acts of congress: See the acts collected, Brightly's Dig. 209-211. The above section is therefore limited to acts committed within this state:" Commissioners' note.

540. *Other persons willfully destroying vessel, etc.*

SEC. 540. Every person, other than such as are embraced within the last section, who is guilty of any act therein specified is punishable by imprisonment in the state prison for a term not exceeding ten years.

541. *Making false manifest, etc.*

SEC. 541. Every person guilty of preparing, making, or subscribing any false or fraudulent manifest, invoice, bill of lading, ship's register, or protest, with intent to defraud another, is punishable by imprisonment in the state prison not exceeding three years.

CHAPTER X.

FRAUDULENTLY KEEPING POSSESSION OF WRECKED PROPERTY.

544. *Detaining wrecked property after salvage paid.*

SEC. 544. Every person who keeps any wrecked property, or the proceeds thereof, after the salvage and expenses chargeable thereon have been agreed to or adjusted, and the amount thereof has been paid to him, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or both.

Stats. 1850, 173, sec. 24.
Wrecks and wrecked property: Pol. Code, secs. 2403-2418.

545. *Unlawfully taking or having possession of wrecked property.*

SEC. 545. Every person who takes away any goods from any stranded vessel, or any goods cast by the sea upon the land, or found in any bay or creek, or knowingly has in his possession any goods so taken or found, and does not deliver the same to the sheriff of the county where they were found, or notify him of his readiness to do so within thirty days after the same have been taken by him, or have come into his possession, is guilty of a misdemeanor.

Stats. 1850, 173, sec. 25.

Wrecks and wrecked property: Pol. Code, secs. 2403-2418.

CHAPTER XI.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

548. *Burning or destroying property insured.*

SEC. 548. Every person who willfully burns, or in any other manner injures or destroys, any property which is at the time insured against loss or damage by fire, or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of or in possession of such person, or of any other, is punishable by imprisonment in the state prison not less than one nor more than ten years.

Burning insured property.—This section takes the place of section 7 of the act of April 19, 1856, Stats. 1856, 132, and includes every injury to property insured. In *People* v. *Hughes*, 29 Cal. 257, it was held that upon the trial of an indictment charging the defendant with burning a certain building belonging to him, which building was at the time insured against loss or damage by fire by a duly incorporated company, etc., it was not necessary to show that the company was duly incorporated, but that proof that such company was a *de facto* corporation was sufficient. The indictment should aver, however, that the company is a corporation if such be the fact, or that it is a partnership composed of certain individuals, naming them, if such be the fact, and that the act was done with intent to injure and defraud them in their associate capacity: *People* v. *Schwartz*, 32 Id. 160. The act of burning the property insured must be done with the intent to defraud the insurer: *People* v. *Trim*, 39 Id. 75. It was held in the latter case, upon the separate trial of one of two parties on an indictment for arson in burning a building covered by insurance, with intent to defraud the insurer, that the attempt of the other party to procure the payment from the insurer of the amount of the loss insured against is competent evidence as acts and declarations of a coconspirator, in furtherance of the original purpose of the conspiracy to defraud the insurer.

Arson: See sec. 447, and note.

549. *Presenting false proofs in support of a claim upon policy of insurance.*

SEC. 549. Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance for the payment of any loss, or who prepares, makes, or subscribes any account, certificate of survey, affidavit, or proof of loss, or other book, paper, or writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim, is punishable by imprisonment in the state prison not exceeding three years, or by a fine not exceeding one thousand dollars, or by both.

CHAPTER XII.

FALSE WEIGHTS AND MEASURES.

552. *False weight and measure defined.*

SEC. 552. A false weight or measure is one which does not conform to the standard established by the laws of the United States of America.

Weights and measures: See Pol. Code, secs. 3209-3223.

"Based on the act of April 4, 1861: Stats. 1861, 86, establishing a standard of weights and measures. . . . . Our statute recognizes the superiority of the act of congress, hence our statute must be construed as subordinate thereto, the act of congress given in note to section 3209 of the Political Code being approved July 28, 1866, and our statute, on which the sections of the code are based, was approved April 4, 1861, 86:" From commissioners' note.

553. *Using false weights or measures.*

SEC. 553. Every person who uses any weight or measure, knowing it to be false, by which use another is defrauded or otherwise injured, is guilty of a misdemeanor.

"Founded upon section 14 of the act cited in note to preceding section, and section 133 of the crimes and punishment act of 1850: Stats. 1850, 229:" Commissioners' note.

554. *Stamping false weight, measure, or tare on casks or packages.*

SEC. 554. Every person who knowingly marks or stamps false or short weight or measure, or false tare, on any cask or package, or knowingly sells, or offers for sale, any cask or package so marked, is guilty of a misdemeanor.

555. *Measure to be given—Sales by ton or pound.*

SEC. 555. In all sales of coal, hay, and other commodities, usually sold by the ton or fractional parts thereof, the seller must give to the purchaser full weight, at the rate of two thousand pounds to the ton; and in all sales of articles which are sold in commerce by avoirdupois weight, the seller must give to the purchaser full weight, at the rate of sixteen ounces to the pound; and any person violating this section is guilty of a misdemeanor. [*New section, approved February* 15, 1876; *Amendments* 1875–6, 112; *took effect sixtieth day after passage.*]

CHAPTER XIII.

FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER FRAUDS IN THEIR MANAGEMENT.

557. *Fraud in subscriptions for stock of corporations.*

SEC. 557. Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

Subscription to articles of incorporation: Civ. Code, sec. 292.
Subscription to capital stock: Civ. Code, sec. 293.
Oath to subscription: Civ. Code, sec. 295.

558. *Frauds in procuring organization of corporation or increasing its capital.*

SEC. 558. Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the state prison not less than three nor more than ten years.

False certificate, report, or notice—Civil liability of officers: See sec. 316, Civ. Code.
Corporations, organization of: Sec. 283, Civ. Code.
Records: Secs. 377, 378, Civ. Code.
Increasing stock: Sec. 359, Civ. Code.
False entries in corporate books.—An indictment against an agent of a corporation, for having made a false entry in the corporate books, should specify the particular entry complained of, and should at least state the substance of it according to its legal effect. An averment that the defendant made a false entry in the books, "by which false entry it appears that the cash on hand at the commencement of business on that day" was a specified sum, is insufficient: *People* v. *Palmer*, 53 Cal. 615. See Nixon's Digest of the Laws of New Jersey, 3d ed., 372, sec. 4, for a law similar to this section. In *State* v. *Stimson*, 24 N. J. L. 478, it was

held that an officer who knowingly overdraws his account with the bank of which he is an officer, although done without intent to defraud, and without defrauding, the bank, is guilty of a misdemeanor. See that case for what an indictment charging an officer with overdrawing his account should contain.

559. *Unauthorized use of name in prospectus, etc.*

SEC. 559. Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement, or announcement of any corporation or joint-stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member, or promoter of such corporation or association, is guilty of a misdemeanor.

560. *Misconduct of directors of stock corporations.*

SEC. 560. Every director of any stock corporation who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended, either:

1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner except as provided by law pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or,

5. To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such other corporation;

—Is guilty of a misdemeanor.

Dividends to be made from surplus profits: Sec. 309, Civ. Code.

561. *Savings-bank officer overdrawing account.*

SEC. 561. Every officer, agent, teller, or clerk of any savings bank who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, note, or funds of such bank, is guilty of a misdemeanor.

562. *Receiving deposits in insolvent banks.*

SEC. 562. Every officer, agent, teller, or clerk of any bank, and every individual banker, or agent, teller, or clerk of any individual banker, who receives any deposits, knowing that such bank, or association, or banker is insolvent, is guilty of a misdemeanor.

563. *Frauds in keeping accounts in books of corporations.*

SEC. 563. Every director, officer, or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent, or member of any corporation or joint-stock association who, with intent to defraud, destroys, alters,

mutilates, or falsifies any of the books, papers, writings, or securities belonging to such corporation or association, or makes, or concurs in making, any false entries, or omits, or concurs in omitting, to make any material entry, in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the state prison not less than three nor more than ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

564. *Officer of corporation publishing false reports of its condition.*

SEC. 564. Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or refuses to make any book or post any notice required by law, in the manner required by law, other than such as are mentioned in this chapter, is guilty of a felony. [*Amendment, approved January* 27, 1876; *Amendments* 1875–6, 113; *took effect sixtieth day after passage.*]

Making false statement and publishing it—Two offenses.—This section as, amended in 1876, defines two or more offenses, one being a concurrence by an officer of a corporation in making a statement which is false, and another being a concurrence in the publication of such statement. An indictment which charges both offenses is demurrable, on the ground that more than one offense is charged: *People* v. *Cooper*, 53 Cal. 647; see *Cross* v. *Sackett*, 6 Abb. Pr. 247; *Harper* v. *Chamberlain*, 11 Id. 234; sec. 316, Civ. Code; see also sec. 558, and note.

565. *Officer of corporation to permit an inspection of its books.*

SEC. 565. Every officer or agent of any corporation, having or keeping an office within this state, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

See *Cotheal* v. *Brouwer*, 1 Selv. 567.

566. *Officer of railroad company contracting debt in its behalf exceeding its available means.*

SEC. 566. Every officer, agent, or stockholder of any railroad company who knowingly assents to or has any agency in contracting any debt by or on behalf of such company, unauthorized by a special law for the purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it at the time such debt is contracted, including its bona fide and available stock subscriptions, and exclusive of its real estate, is guilty of a misdemeanor.

567. *Debt contracted in violation of last section not invalid.*

SEC. 567. The last section does not affect the validity of a debt created in violation of its provisions, as against the company.

568. *Director of corporation presumed to have knowledge of its affairs.*

SEC. 568. Every director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of this chapter.

569. *Director present at meeting, when presumed to have assented to proceedings.*

SEC. 569. Every director of a corporation or joint-stock association who is present at a meeting of the directors at which any act, proceeding, or omission

of such directors, in violation of this chapter occurs, is deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered in the minutes of the directors.

570. *Director absent from meeting, when presumed to have assented to proceedings.*

SEC. 570. Every director of a corporation or joint-stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.

571. *Foreign corporations.*

SEC. 571. It is no defense to a prosecution for a violation of the provisions of this chapter that the corporation was one created by the laws of another state, government, or country, if it was one carrying on business or keeping an office therefor within this state.

572. *Director defined.*

SEC. 572. The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

"Most of the provisions of this chapter, which are taken from the New York penal code secs. 645–668, are new to our laws. The great importance that corporations are assuming in the country, the almost absolute power of the directors over the property of the corporation, and the numerous frauds that are perpetrated upon the community as well as upon shareholders, point necessity for stringent penal enactments: Commissioners' note.

CHAPTER XIV.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLE TO MERCHANDISE.

577. *Issuing fictitious bills of lading, etc.*

SEC. 577. Every person, being the master, owner, or agent of any vessel, or officer or agent of any railroad, express, or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt, or other voucher, by which it appears that any merchandise of any description has been shipped on board any vessel, or delivered to any railroad, express, or transportation company or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner, or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt, or voucher, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Bill of lading defined: Sec. 2126, Civ. Code.

578. *Issuing fictitious warehouse receipts.*

SEC. 578. Every person carrying on the business of a warehouseman, wharfinger, or other depositary of property, who issues any receipt, bill of lading, or other voucher for any merchandise of any description, which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is

issued to a person as being the owner of such merchandise or as security for any indebtedness, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

"Warehouseman is a person who receives goods and merchandise to be stored in his warehouse for hire: 2 Bouv. Law Dict. 650. Wharfinger, one who owns or keeps a wharf for the purpose of receiving and shipping merchandise to and from it for hire: Id. 660. Receipt, a written acknowledgment of . . . . delivery of chattels. See also *Hooper* v. *Wells, Fargo & Co.*, 27 Cal. 11. Other depositary includes common carriers, forwarders, innkeepers, pawnbrokers, pledgees, etc.; it means one who receives personal property to be kept for the benefit of the depositor or a third party: Civ. Code, sec. 1814:" Commissioners' note.

579. *Erroneous bills of lading or receipts issued in good faith excepted.*

SEC. 579. No person can be convicted of an offense under the last two sections by reason that the contents of any barrel, box, case, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels, or brands upon the outside of such vessel, or package, unless it appears that the accused knew that such marks, labels, or brands were untrue.

580. *Duplicate receipts must be marked "duplicate."*

SEC. 580. Every person mentioned in this chapter, who issues any second or duplicate receipt or voucher, of a kind specified therein, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

"Section 2130, and note, Civ. Code Cal., provides for issuing several receipts or bills of lading; this is, of course, not prohibited by this section:" Commissioners' note.

581. *Selling, hypothecating, or pledging property received for transportation or storage.*

SEC. 581. Every person mentioned in this chapter, who sells, hypothecates, or pledges any merchandise for which any bill of lading, receipt, or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt, or voucher, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

"Nothing in this section is intended to prevent the disposal of 'unclaimed property,' as provided in the Political Code of California, by sections 3152–3157:" Commissioners' note.

582. *Bill of lading or receipt to be canceled on delivery of property.*

Section 582 was repealed by act approved March 30, 1874; Amendments 1873–4, 434; took effect July 1, 1874.

583. *Property demanded by process of law.*

SEC. 583. The last two sections do not apply where property is demanded or sold by virtue of process of law.

CHAPTER XV.

MALICIOUS INJURIES TO RAILROAD BRIDGES, HIGHWAYS, BRIDGES, AND TELEGRAPHS.

587. *Injuries to railroads and railroad bridges.*

SEC. 587. Every person who maliciously, either:

1. Removes, displaces, injures, or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or any branch or branch-

way, switch, turnout, bridge, viaduct, culvert, embankment, station-house, or other structure or fixture, or any part thereof, attached to or connected with any railroad; or,

2. Places any obstruction upon the rails or track of any railroad, or of any switch, branch, branch-way, or turnout connected with any railroad;

—Is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not less than six months.

Stats. 1861, 625, sec. 53.

588. *Injuries to highways, private ways, and bridges.*

SEC. 588. Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such highway or private way, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year.

Stats. 1861, 397, sec. 20.

589. *Injuries to toll-houses and gates.*

SEC. 589. Every person who maliciously injures or destroys any toll-house or turnpike gate is guilty of a misdemeanor.

Stats. 1853, 176, sec. 32.

590. *Injuries to mile-stones and guide-boards.*

SEC. 590. Every person who maliciously removes or injures any mile-board, post, or stone, or guide-post, or any inscription on such, erected upon any highway, is guilty of a misdemeanor.

591. *Injuring telegraph lines.*

SEC. 591. Every person who maliciously takes down, removes, injures, or obstructs any line of telegraph, or any part thereof, or appurtenance or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor.

592. *Taking water from canals, and obstructing same.*

SEC. 592. Every person who shall, without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, flume, or reservoir, used for the purpose of holding or conveying water for manufacturing, agricultural, mining, or domestic uses, or who shall, without like authority, raise, lower, or otherwise disturb any gate or other appurtenance thereof used for the control or measurement of water, or who shall empty or place, or cause to be emptied or placed, into any such canal, ditch, flume, or reservoir, any rubbish, filth, or obstruction to the free flow of the water, is guilty of a misdemeanor. [*New section, approved April* 1, 1878; *Amendments* 1877–8, 118; *took effect sixtieth day after passage.*]

TITLE XIV.

MALICIOUS MISCHIEF.

594. *Malicious mischief in general defined.*

SEC. 594. Every person who maliciously injures or destroys any real or personal property not his own, in cases otherwise than such as are specified in this code, is guilty of a misdemeanor.

Malicious mischief.—For an enumeration of the various acts coming within this category and for a general discussion of the subject, see *State* v. *Robinson*, 32 Am. Dec. 662–670. The essence of the offense of malicious mischief is the injury to or destruction of property; and

any act, however wanton and dangerous, which does not result in such injury or destruction, is not an act of malicious mischief: *Wait* v. *Green*, 5 Park. Cr. 185. The offense consists in the willful destruction of property, from actual ill-will or resentment towards its owner: *State* v. *Robinson*, 3 Dev. & B. 130; *Goforth* v. *State*, 8 Humph. 37; see also *Dawson* v. *State*, 52 Ind. 478; *Sattler* v. *People*, 59 Ill. 68; *Ritter* v. *State*, 33 Tex. 608; see sec. 597, note.

595. *Specifications in following sections not restrictive of last section.*

SEC. 595. The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of the preceding section.

596. *Poisoning cattle.*

SEC. 596. Every person who willfully administers any poison to an animal, the property of another, or maliciously exposes any poisonous substance with the intent that the same shall be taken or swallowed by any such animal, is punishable by imprisonment in the state prison not exceeding three years, or in the county jail not exceeding one year, and a fine not exceeding five hundred dollars.

See secs. 594, 597, and note.

"The act of March 30, 1868, see Stats. 1868, 604, 'for the more effectual prevention of cruelty to animals,' was expressly preserved by section 19, Political Code, subdivision 8. This also effectively preserves the act published in statutes 1871–2, 393, amendatory thereof:" Commissioners' note.

597. *Killing, maiming, or torturing animals.*

SEC. 597. Every person who maliciously kills, maims, or wounds an animal, the property of another, or who maliciously and cruelly beats, tortures, or injures any animal, whether belonging to himself or another, is guilty of a misdemeanor.

Stats. 1855, 105, sec. 4.

Malice towards the owner is a necessary ingredient of the offense: *Hobson* v. *State*, 44 Ala. 380; *Hill* v. *State*, 43 Id. 335; *State* v. *Wilcox*, 3 Yerg. 277; S. C., 24 Am. Dec. 569; *State* v. *Newby*, 64 N. C. 23; see sec. 594, note. It is a good defense to show that the wounding or killing was done to protect the crop of the accused, and not from either ill-will towards the owner, or cruelty to the animal: *Wright* v. *State*, 30 Ga. 325; *Commonwealth* v. *Walden*, 3 Cush. 558; *State* v. *Pierce*, 7 Ala. 728.

598. *Killing, etc., birds in cemeteries.*

SEC. 598. Every person who, within any public cemetery or burying-ground, kills, wounds, or traps any bird, or destroys any bird's nest other than swallows' nests, or removes any eggs or young birds from any nest, is guilty of a misdemeanor.

For act protecting mocking-birds, and also protecting gulls near Santa Monica, see *post*, sec. 627.

599. *Killing seals near Cliff House.*

Section 599, prohibiting killing seals and sea-lions within one mile of the Cliff House in the city and county of San Francisco, was repealed by act of March 12, 1880; Amendments 1880, 5 (Ban. ed. 26); took effect from passage.

600. *Burning buildings and other property not the subject of arson.*

SEC. 600. Every person who willfully and maliciously burns any bridge exceeding in value fifty dollars, or any building, snow-shed, or vessel, not the subject of arson, or any stack of grain of any kind, or of hay, or any growing or standing grain, grass, or tree, or any fence, not the property of such person, is punishable by imprisonment in the state prison for not less than one nor more than ten years,

Stats. 1861, 131, sec. 5.

601. *Using gunpowder, etc., in destroying or injuring any building.*

SEC. 601. Every person who maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down, or injures the whole or any part of any building, by means of which the life or safety of a human being is endangered, is guilty of felony.

602. *Malicious injuries to freehold.*

SEC. 602. Every person who willfully commits any trespass by either:

1. Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another; or,

2. Carrying away any kind of wood or timber lying on such lands; or,

3. Maliciously injuring or severing from the freehold of another anything attached thereto, or the produce thereof; or,

4. Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil, or stone; or,

5. Digging, taking, or carrying away from any land in any of the cities of the state, laid down on the map or plan of such city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone; or,

6. Putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention thereto; or,

7. Entering upon any lands owned by any other person or persons whereon oysters or other shell-fish are planted or growing; or injuring, gathering, or carrying away any oysters or other shell-fish planted, growing, or being on any such lands, whether covered by water or not, without the license of the owner or legal occupant thereof; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any such lands—is guilty of a misdemeanor. [*Amendment, approved March* 30, 1878; *Amendments* 1877–8, 118; *took effect from passage.*]

"**This and the succeeding section embody** in substance the penal provisions of section 138 of the crimes and punishment act; of an act for the protection of timber, Stats. 1862, 307; of an act for the punishment of persons cutting timber on certain lands of the state, Stats. 1863, 739; of an act to prevent the destruction of timber on the lands of the state, Stats. 1864, 136; of an act supplemental to the last, Stats. 1864, 361; of an act relating to the Yosemite valley and Mariposa big tree grove, Stats. 1866, 710:" Commissioners' note.

Subd. 6. Signs on public property.—"This provision is rendered necessary by the practice, unfortunately common, of affixing to any picturesque rock or point of land some advertisement of a current nostrum, etc. This was a simple trespass, but it is made a misdemeanor. It is taken from section 707, New York penal code:" Commissioners' note.

An Act to prevent persons passing through inclosures and leaving them open, and tearing down fences to make passage through inclosures.

[Approved March 16, 1872; 1871–2, 384.]

Passing through and leaving open inclosure.

SECTION 1. Any person passing through an inclosure of another and leaving the same open is guilty of a misdemeanor, and punishable by a fine not less than twenty dollars nor more than fifty dollars.

Tearing down fences.

SEC. 2. Any person willfully or maliciously tearing down fences to make a passage through an inclosure is guilty of a misdemeanor, and punishable by a fine not less than fifty dollars nor more than five hundred dollars.

Fines.

SEC. 3. All fines collected under the provisions of this act shall be paid into the county school fund of the county where the offense is committed.

SEC. 4. This act shall take effect immediately.

An Act to protect the groves of big trees in the counties of Fresno, Tulare, and Kern.

[Approved March 13, 1874; 1873–4, 347.]

Misdemeanor.

SECTION 1. Any person or persons who shall willfully cut down, or strip of its bark, any tree "over sixteen feet in diameter," in the grove of big trees situated in the counties of Fresno,

Tulare, or Kern, or shall destroy any of said trees by fire, shall be guilty of a misdemeanor, and shall, on conviction thereof before any justice of the peace in said counties, be fined not less than ($50) fifty dollars nor more than ($300) three hundred dollars, or imprisonment in the county jail not less than (25) twenty-five days nor more than (150) one hundred and fifty days, or both fine and imprisonment, as the court may determine.

Disposition of fines.

SEC. 2. Upon the arrest and conviction of any person or persons guilty of any of the acts before mentioned, the party informing shall be entitled to one half of the fines collected.

SEC. 3. This act shall take effect and be in force from and after its passage.

603. *Limitation upon the operations of the preceding section.*

SEC. 603. The following acts do not constitute a public offense within the meaning of the preceding section:

1. Gathering pitch from trees on the public lands of the state or United States, unless the bark from such trees is removed for more than one eighth of their circumference, or cut made more than three inches in depth into the wood thereof;

2. Cutting trees upon the public lands of the state or United States, in good faith, for the purpose of manufacturing the same into lumber or fire-wood, or preparing such lands for agricultural or mining purposes;

—Unless such acts are committed upon swamp and overflowed, tide, salt-marsh, or school lands belonging to the state, or within the limits of the lands granted by the United States to this state by act of congress of June thirteenth, eighteen hundred and sixty-four, relating to the Yosemite valley and Mariposa big tree grove.

604. *Injuries to standing crops, etc.*

SEC. 604. Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this code, is guilty of a misdemeanor.

605. *Removing, defacing, or altering landmarks.*

SEC. 605. Every person who either:

1. Maliciously removes any monument erected for the purpose of designating any point in the boundary of any lot or tract of land, or a place where a subaqueous telegraph cable lies; or,

2. Maliciously defaces or alters the marks upon any such monument; or,

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks;

—Is guilty of a misdemeanor.

Stats. 1857, 171, sec. 2.

606. *Destroying or injuring jails.*

SEC. 606. Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any public jail or other place of confinement, is punishable by fine not exceeding ten thousand dollars, and by imprisonment in the state prison not exceeding five years.

607. *Destroying or injuring bridges, dams, levees, etc.*

SEC. 607. Every person who willfully and maliciously cuts, breaks, injuries, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim any swamp and overflowed tide or marsh land, or to store or conduct water for mining, manufacturing, reclamation, or agricultural purposes, or for the supply of the inhabitants of any city or town, or any embankment necessary

to the same, or either of them, or willfully or maliciously makes, or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same; or draws up, cuts, or injures any piles fixed in the ground for the purpose of securing any sea-bank, or sea-walls, or any dock, quay, or jetty, lock, or sea-wall; or who, between the first day of October and the fifteenth day of April of each year, plows up or loosens the soil in the bed or on the sides of any natural watercourse or channel, without removing such soil within twenty-four hours from such watercourse or channel; or who, between the fifteenth day of April and the first day of October of each year, shall plow up or loosen the soil in the bed or on the sides of such natural watercourse or channel, and shall not remove therefrom the soil so plowed up or loosened before the first day of October next thereafter, is guilty of a misdemeanor, and upon conviction, punishable by a fine not less than one hundred dollars and not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding two years, or by both; provided, that nothing in this section shall be construed so as to in any manner prohibit any person from digging or removing soil from any such watercourse or channel, for the purpose of mining. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 36 (*Ban. ed.* 203); *took effect immediately.*]

Cutting levees.—Under this section, as it existed prior to its amendment in April, 1880, the commission of the acts mentioned therein constituted a felony. In *People* v. *Tisdale*, 57 Cal. 104, it was held that a person who cut, broke, or injured a levee prior to April 7, 1880, could not be prosecuted by information, but only by indictment: See *People* v. *Campbell*, 59 Id. 243.

608. *Burning or injuring rafts.*

SEC. 608. Every person who willfully and maliciously burns, injures, or destroys any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or part thereof, or cuts, breaks, injures, sinks, or sets adrift any vessel, the property of another, is punishable by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months.

An Act to protect lumber manufacturers.

[Approved February 9, 1876; 1875–6, 32.]

Malicious injury to saw-logs, etc., felony.

SECTION 1. Every person who maliciously drives into or places within any saw-log, shingle-bolt, or other wood, any iron, steel, or other substance sufficiently hard to injure saws, knowing that the said saw-log, shingle-bolt, or other wood is intended by the owner thereof to be manufactured into any kind of lumber, is guilty of a felony, and shall be punished by imprisonment in the state prison not less than one nor more than five years.

SEC. 2. This act shall take effect and be in force from and after its passage.

609. *Removing buoys and beacons.*

SEC. 609. Every person who willfully removes any buoy or beacon, placed in any waters within this state by lawful authority, is guilty of a misdemeanor.

610. *Masking or removing signal lights, or exhibiting false lights.*

SEC. 610. Every person who unlawfully masks, alters, or removes any light or signal, or willfully exhibits any light or signal, with intent to bring any vessel into danger, is punishable by imprisonment in the state prison not less than three nor more than ten years.

611. *Obstructing navigable streams.*

SEC. 611. Every person who unlawfully obstructs the navigation of any navigable stream is guilty of a misdemeanor.

Stats. 1850, 188, sec. 1.

612. *Depositing sand, dust, etc., in Humboldt bay.*

SEC. 612. Every person who throws, deposits, or permits another in his employ to throw or deposit, any sawdust, slabs, or refuse lumber in any place where it may be carried or fall into the waters of Humboldt bay, without first having constructed piers, bulkheads, dams, or other contrivances, approved by the board of supervisors of Humboldt county, to prevent the same from escaping into the channels of such bay, is guilty of a misdemeanor.

Stats. 1857, 66, secs. 1, 2.

613. *Throwing overboard ballast, or otherwise obstructing the navigation of any harbor, etc.*

SEC. 613. Every person who, within the anchorage of any port, harbor, or cove of this state, into which vessels may enter for the purpose of receiving or discharging cargo, throws overboard from any vessel the ballast, or any part thereof, or who otherwise places or causes to be placed in such port, harbor, or cove any obstructions to the navigation thereof, is guilty of a misdemeanor.

Stats. 1861, 224, sec. 3; 1864, 138.

614. *Mooring vessels to buoys.*

SEC. 614. Every person mooring any vessel to or hanging on with a vessel to any buoy or beacon, placed by competent authority in any navigable waters of this state, is guilty of a misdemeanor.

Stats. 1861, 224, sec. 2.

An Act for the protection of buoys and beacons.

[Approved March 26, 1874; 1873-4, 619.]

Damages to buoys and beacons.

SECTION 1. Any person or persons who shall moor any vessel or boat of any kind, or any raft or scow, to any buoy or beacon placed in the waters of California by authority of the United States light-house board, or shall in any manner hang on to the same, with any vessel, boat, raft, or scow, or shall willfully remove, damage, or destroy any such buoy or beacon, or any part of the same, or shall cut down, remove, damage, or destroy any beacon or beacons erected on land in this state by the authority aforesaid, shall, for every such offense, be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months; one third of the fine in such case to be paid to the informer, and two thirds thereof to the light-house board, to be used in repairing said buoys and beacons.

SEC. 2. The cost of repairing or replacing any such buoy or beacon which may have been misplaced, damaged, or destroyed by any vessel, boat, raft, or scow being made fast to the same, shall, when said cost shall have been legally ascertained, be a lien upon such vessel, boat, raft, or scow, and recovered against the same, and the owner or owners thereof, in an action of debt, in any court of competent jurisdiction in this state.

SEC. 3. This act shall take effect from and after its passage.

615. *Injuries to signals, monuments, etc., erected in United States coast survey.*

SEC. 615. Every person who willfully injures, defaces, or removes any signal, monument, building, or appurtenance thereto, placed, erected, or used by persons engaged in the United States coast survey, is guilty of a misdemeanor.

Stats. 1852, 148, sec. 6.

616. *Destroying or tearing down notices, etc., before expiration of time for which they were to remain set up.*

SEC. 616. Every person who intentionally defaces, obliterates, tears down, or destroys any copy or transcript, or extract from or of any law of the United States or of this state, or any proclamation, advertisement, or notification set up at any place in this state, by authority of any law of the United States or of this state, or by order of any court, before the expiration of the time for which the same was to remain set up, is punishable by fine not less than twenty nor more than one hundred dollars, or by imprisonment in the county jail not more than one month.

617. *Injuring or destroying written instrument.*

SEC. 617. Every person who maliciously mutilates, tears, defaces, obliterates, or destroys any written instrument, the property of another, the false making of which would be forgery, is punishable by imprisonment in the state prison for not less than one nor more than five years.

618. *Opening or publishing sealed letters.*

SEC. 618. Every person who willfully opens or reads, or causes to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letter, knowing the same to have been unlawfully opened, is guilty of a misdemeanor.

619. *Disclosing contents of telegraphic message.*

SEC. 619. Every person who willfully discloses the contents of a telegraphic message, or any part thereof, addressed to another person, without the permission of such person, unless directed so to do by the lawful order of a court, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment. [*Amendment, approved April* 15, 1880; *Amendments* 1880, 38 (*Ban. ed.* 224); *took effect sixtieth day after passage.*]

620. *Altering telegraphic messages.*

SEC. 620. Every person who willfully alters the purport, effect, or meaning of a telegraphic message, to the injury of another, is punishable as provided in the preceding section.

Stats. 1862, 288, sec. 1.

621. *Opening sealed envelopes containing telegraphic dispatches.*

SEC. 621. Every person not connected with any telegraph office who, without the authority or consent of the person to whom the same may be directed, willfully opens any sealed envelope inclosing a telegraphic message and addressed to any other person, with the purpose of learning the contents of such message, or who fraudulently represents any other person and thereby procures to be delivered to himself any telegraphic message addressed to such other person, with the intent to use, destroy, or detain the same from the person or persons entitled to receive such message, is punishable as provided in section six hundred and nineteen.

622. *Injuring works of art or improvements in any city, town, or village.*

SEC. 622. Every person, not the owner thereof, who willfully injures, disfigures, or destroys any monument, work of art, or useful or ornamental improvement within the limits of any village, town, or city, or any shade tree or ornamental plant growing therein, whether situated upon private ground or on any street, sidewalk, or public park or place, is guilty of a misdemeanor.

623. *Destroying works of literature, etc., in public libraries.*

SEC. 623. Every person who maliciously cuts, tears, defaces, breaks, or injures any book, map, chart, picture, engraving, statue, coin, model, apparatus, or other work of literature, art, or mechanics, or object of curiosity deposited in any public library, gallery, museum, collection, fair, or exhibition, is guilty of felony.

624. *Breaking or obstructing gas or water pipes, etc.*

SEC. 624. Every person who willfully breaks, digs up, obstructs, or injures any pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is guilty of a misdemeanor.

Stats. 1861, 533, secs. 1, 2.

625. *Drawing water from works after they have been closed.*

SEC. 625. Every person who, with intent to defraud or injure, opens or causes to be opened, or draws water from any stop-cock or faucet by which the flow of water is controlled, after having been notified that the same has been closed or shut for specific cause, by order of competent authority, is guilty of a misdemeanor.

Stats. 1861, 533, sec. 3.

TITLE XV.

MISCELLANEOUS CRIMES.

CHAPTER I. VIOLATION OF THE LAWS FOR THE PRESERVATION OF GAME AND FISH 626
II. OF OTHER AND MISCELLANEOUS OFFENSES 638

CHAPTER I.

VIOLATION OF THE LAWS FOR THE PRESERVATION OF GAME AND FISH.

626. *Destruction of quail, grouse, deer, when prohibited.*

SEC. 626. Every person who, in the state of California, between the first day of March and the first day of October in each year, hunts, pursues, takes, kills, or destroys quail, partridges, or grouse, or rail, is guilty of a misdemeanor. Every person who, in any of the counties of this state, at any time takes, gathers, or destroys the eggs of any quail, partridge, or grouse is guilty of a misdemeanor. Every person, who, in this state, between the first day of January and the first day of June in each year, hunts, pursues, takes, kills, or destroys doves is guilty of a misdemeanor. Every person who, between the first day of November in each year and the first day of July in the following year, hunts, pursues, takes, kills, or destroys any male deer or buck is guilty of a misdemeanor. Any person in the state of California who has in his possession any hides or skins of any deer, elk, antelope, or mountain sheep killed between the first day of November and the first day of July is guilty of a misdemeanor. Every person who shall at any time in the state of California hunt, pursue, take, kill, or destroy any antelope, elk, mountain sheep, female deer, or doe shall be guilty of a misdemeanor. Every person who shall at any time hunt, pursue, take, kill, or destroy any spotted fawn is guilty of a misdemeanor. Every person who shall take, kill, or destroy any of the animals mentioned in this section at any time, unless the carcass of such animal is used or preserved by the person taking or slaying it, or is sold for food, is guilty of a misdemeanor. Every person who shall buy, sell, offer, or expose for sale, transport, or have in his possession, any deer from which evidence of sex has been removed, or any of the aforesaid game at a time when it is unlawful to kill the same, as provided by this and subsequent sections, is guilty of a misdemeanor. [*Amendment, approved March* 9, 1883; *Statute and Amendments* 1883, 80; *took effect July* 1, 1883.]

An Act to prevent the capture and destruction of mocking-birds in this state.
[Approved February 14, 1872; 1871–2, 102.]

Killing, injuring, or taking mocking-birds.

SECTION 1. Any person or persons who shall willfully and knowingly shoot, wound, trap, snare, or in any other manner catch or capture any mocking-bird in the state of California, or shall knowingly take, injure, or destroy the nest of any mocking-bird, or shall take, injure, or destroy any mocking-bird's eggs, in the nest or otherwise, in said state, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the township in which the offense shall have been committed shall be fined in a sum not less than five dollars nor exceeding ten dollars, and cost of the action for each offense, or may be imprisoned not less than five days nor more than ten days, or by both such fine and imprisonment, as the judgment of the court may direct.

Fines.

SEC. 2. All fines collected under the provisions of this act shall be paid into the county treasury for the benefit of the common-school fund.

SEC. 3. This act shall take effect and be in force from and after its passage.

An Act to protect sea-gulls in the neighborhood of Santa Monica.
[Approved March 15, 1876; 1875–6, 287.]

Misdemeanor.

SECTION 1. Every person who willfully kills or destroys any of that species of sea birds known as gulls, within five miles of the town of Santa Monica, in Los Angeles county, is guilty of a misdemeanor.

SEC. 2. This act shall take effect and be in force from and after its passage.

An Act for the protection of game in Nevada county.
[Approved February 6, 1874; 1873–4, 80.]

Elk, deer, and antelope, in Nevada county.

SECTION 1. It shall not be lawful for any person or persons to take, kill, or destroy the male or female of any elk, deer, or antelope, in the county of Nevada, between the first day of February and the first day of August in each year.

SEC. 2. All acts and parts of acts, so far as the same may conflict with the provisions of this act, are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

An Act to prevent the destruction of deer on Monte Diablo, in Contra Costa county.
[Approved March 28, 1878; 1877–8, 599.]

Hunting or killing deer at Mount Diablo—Misdemeanor.

SECTION 1. Every person who shall hunt, pursue, kill, or destroy any male or female deer or fawn within three miles of the summit of Monte Diablo, in Contra Costa county, for the period of four years from the date of the passage of this act, is guilty of a misdemeanor.

SEC. 2. This act shall take effect immediately.

627, 628, 629. *Game laws.*

The sections being included in the amendments of 1883 to sections 626, 631, 632 were repealed by the same act adopting those amendments.

630. *Use of phosphorus on land in certain counties prohibited.*

SEC. 630. Every person who, in the counties of Santa Clara, Contra Costa, San Joaquin, Santa Cruz, or San Mateo, uses or distributes phosphorus upon any land or ground, between the first day of March and the first day of November in any year, is guilty of a misdemeanor.

Stats. 1863, 185, secs. 1–3.

631. *Trapping quail, partridges, and grouse.*

SEC. 631. Every person who shall at any time net, pound, wear, cage, or trap any quail, partridge, or grouse, and every person who shall sell, buy, transport, or give away, or offer or expose for sale, or have in his possession, any quail, partridge, or grouse that have been snared, captured, or taken in or by means of any net, pound, wear, cage, or trap, is guilty of a misdemeanor. Proof of possession of any quail, partridge, or grouse which shall not show evidence of having been taken by means other than a net, pound, wear, cage, or trap shall be prima facie evidence in any prosecution for a violation of the provisions of this section, that the person in whose possession such quail, partridge, or grouse is found, took, killed, or destroyed the same by means of a net, pound, wear, cage, or trap. [*Amendment, approved March* 9, 1883; *Statutes and Amendments* 1883, 81; *took effect July* 1, 1883.]

632. *Catching trout other than with hook and line.*

SEC. 632. Every person who, in the state of California, at any time, takes or catches any trout, except with hook and line, is guilty of a misdemeanor. Any person or persons who shall, at any time, take, procure, or destroy any fish of any kind by means of explosives is guilty of a misdemeanor. [*Amendment, approved March* 9, 1883; *Statutes and Amendments* 1883, 81; *took effect July* 1, 1883.]

633. *Taking trout, when prohibited.*

SEC. 633. Every person who takes, catches, or kills any speckled trout, brook or salmon trout, or any variety of trout, between the first day of November and the first day of April in the following year, is guilty of a misdemeanor. [*Amendment, approved March* 30, 1878; *Amendments* 1877–8, 120; *took effect from passage.*]

634. *Salmon and shad catching restricted.*

SEC. 634. Every person who, between the thirty-first day of August and the first day of October of each year, takes or catches, buys, sells, or has in his possession, any fresh salmon, is guilty of a misdemeanor. Every person who shall set or draw, or assist in setting or drawing, any net or seine for the purpose of taking or catching salmon or shad in any of the public waters of this state, at any time between sunrise of each Saturday and sunset of the following Sunday, is guilty of a misdemeanor. Every person who shall, for the purpose of catching shad or salmon, in any public waters of this state, fish with, or use any seine or net, the meshes, when drawn closely together and measured, inside the knot, less than seven and one half inches in length, is guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars, or in default, not less than one hundred days in the county jail. One half of all moneys collected for fines for violation of the provisions of this chapter shall be paid to the informer, one quarter to the district attorney of the county in which the action is tried, and one quarter shall be paid into the fish-commission fund; all other costs shall be charged and collected from the county in which the action is prosecuted. Nothing in this chapter shall prohibit the United States fish commissioners, or the fish commissioners of this state, from taking such fish as they deem necessary for the purpose of artificial hatching at all times. [*Amendment, approved March* 12, 1885; *Statutes and Amendments* 1885, 99.]

635. *Use of poisonous, deleterious, and explosive substances prohibited.*

SEC. 635. Every person who places or allows to pass into any of the waters of this state any lime, gas, tar, cocculus indicus, or any other substance deleterious to fish, is guilty of a misdemeanor. And every person who uses any poisonous or explosive substances for the purpose of taking or destroying fish is guilty of a misdemeanor; provided, that sawdust shall not be deemed a deleterious substance. Any person who shall catch, take, or carry away any trout, or other fish, from any stream, pond, or reservoir belonging to any person or corporation, without the consent of the owner thereof, which stream, pond, or reservoir, has been stocked with fish by hatching therein eggs or spawn, or by placing the same therein, is guilty of a misdemeanor. [*Amendment, approved April* 1, 1876; *Amendments* 1875–6, 114; *took effect from passage.*]

636. *Fish-ponds, set-nets, stake-nets, permanent traps, etc., prohibited.*

SEC. 636. Every person who shall set, use, or continue, or who shall assist in setting, using, or continuing any pound, wear, set-net, trap, or any other

fixed or permanent contrivance for catching fish in the waters of this state, is guilty of a misdemeanor. Every person who shall cast, extend, or set any seine or net of any kind for the catching of fish in any river, stream, or slough of this state, which shall extend more than one third across the width of said river, stream, or slough at the time and place of such fishing, is guilty of a misdemeanor. Every person who, by seine or any other means, shall catch the young of fish of any species, and who shall not return the same to the water immediately and alive, or who shall sell or offer for sale any such fish, fresh or dried, is guilty of a misdemeanor. Every person convicted of a violation of any of the provisions of this chapter shall be punished by fine of not less than fifty dollars and not more than three hundred dollars, or imprisonment in the county jail of the county where the offense was committed for not less than thirty days nor more than six months, or by both such fine and imprisonment. One half of all moneys collected for fines for violation of the provisions of this chapter shall be paid to informers and one half to the district attorney of the county in which the action is prosecuted; all other costs shall be charged against the county in which the action is prosecuted. Nothing in this chapter shall be construed to prohibit the United States fish commissioners or the fish commissioners of the state of California from taking such fish as they shall deem necessary for the purpose of artificial hatching, nor at any time. It shall not be lawful for any person to buy or sell, or offer or expose for sale within this state, any kind of trout (except brook-trout) less than eight inches in length. Any person violating the provisions of this section is guilty of a misdemeanor. [*Amendment, approved March* 9, 1883; *Statutes and Amendments* 1883, 82; *took effect July* 1, 1883.]

Former section unconstitutional.—So much of the section as formerly authorized the arbitrary seizure and destruction or sale of the property of the offender, without judicial proceeding for its condemnation, and without notice to the owner, was declared unconstitutional and void: *Hey Sing Yeck* v. *Anderson*, 57 Cal. 251.

An Act to prevent the catching of fish by seines, nets, or wears, in the San Antonio creek in the county of Alameda.

[Approved March 20, 1876; 1875-6, 362.]

Use of seines and nets unlawful.

SECTION 1. It shall not be lawful for any person to catch fish in the waters of the San Antonio creek, in the county of Alameda, by the use of seines, nets, or wears.

Penalty for violation.

SEC. 2. Any person violating the provisions of this act shall be subject to a penalty of not less than fifty nor more than one hundred dollars for each offense, or imprisonment in the county jail of the county of Alameda for a term of not less than thirty nor more than sixty days, which penalty may be enforced by any police judge or justice of the peace of said county.

SEC. 3. This act shall take effect and be in force from and after its passage.

637. *Fish-ways and ladders, penalties for not keeping.*

SEC. 637. Every owner of a dam or other obstruction in the waters of this state, who, after being requested by the fish commissioners so to do, fails to construct and keep in repair sufficient fish-ways and ladders on such dam or obstruction, is guilty of a misdemeanor.

"Stats. 1870, 664, sec. 3. The game laws of this state, and indeed the game laws of all the states, are entirely unlike the English game laws, which had their foundation in the idea, odious to republicans, of restricting the right of taking game to certain privileged classes, generally landholders. Under the English statute of 1831, the law was so modified as to enable any one to obtain a certificate or license to kill game on the payment of a fee. The sole object of our game laws is the protection of animals and birds from unreasonable and indiscriminate havoc, leaving all persons free to take or kill game, under certain restrictions as to the means of capture, and seasons of the year consistent with propagation. Section 4046, subdivision 23, of the Political Code, authorizes the board of supervisors to establish and enforce game laws for their respective counties; which removes from the legislature this class of legislation and places it where it properly belongs, and where it may be successfully exercised:" Commissioners' note.

Conviction under this section and insufficient petition for *certiorari* to the justices' court: *Taylor* v. *Hughes*, 62 Cal. 38.

An Act to prohibit the destruction of fish in Alameda county.

[Approved March 28, 1878; 1877-8, 598.]

Catching fish in Lake Chabot.

SECTION 1. It shall not be lawful for any person to catch, take, or destroy any fish of any kind in the body of water known as Lake Chabot, in the San Leandro creek, in Alameda county, belonging to the Contra Costa Water Company, without permission of the owner or owners thereof.

Catching fish in San Leandro creek.

SEC. 2. It shall not be lawful to take, kill, or destroy any brook or speckled trout, salmon, or salmon-trout, or any other species of fish in San Leandro creek and its branches or tributaries, or in any of the streams or watercourses of said county, between the first day of October of each year and the first day of April of the following year.

Misdemeanor.

SEC. 3. Any person violating the provisions of this act shall be guilty of a misdemeanor.

SEC. 4. This act shall take effect and be in force from and after its passage.

An Act to prevent the destruction of fish in Kings river.

[Approved March 28, 1878; 1877-8, 601.]

Passage of fish through ditches prevented, how.

SECTION 1. The proprietors of all water-ditches and flumes drawing their supply from the waters of Kings river shall place and keep in good repair at the heads of their respective ditches or flumes through which all the water from the river entering the ditch or flume shall pass, strips of wood or other material, the meshes between which shall not exceed one inch in width, for the prevention of the passage of fish from the river into the flumes or ditches. Any person taking water from Kings river in violation of the provisions of this act is guilty of a misdemeanor.

An Act for the preservation of fish in the waters of Lake Bigler.

[Approved March 30, 1878; 1877-8, 746.]

Catching fish, except by hook and line, in Lake Bigler.

SECTION 1. It shall not be lawful for any person or persons to catch or kill any fish in the waters of Lake Bigler, or in any stream leading into or from said Lake Bigler, with any seine, gill-net, spear, wire fence, basket, trap-set net, or dam, or any poisonous, deleterious, or stupefying drug, or explosive compound, or any other implement or appliance, except by means of a hook and line.

Penalty.

SEC. 2. Any person or persons who shall violate any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace, in Placer county, El Dorado county, or Nevada county, shall be punished by a fine of not less than one hundred dollars nor more than five hundred, or by imprisonment in the county jail not less than thirty days nor more than four months, or by both such fine and imprisonment, in the discretion of the court, for each and every offense, besides the cost of prosecution.

Fines, how paid.

SEC. 3. The district attorney, or his deputy, of El Dorado county, or of Placer county, or of Nevada county, whichever the informer may notify as within the district attorney's jurisdiction, shall prosecute such suits, and upon conviction all fines, damages, and penalties that may be awarded or collected under this act shall be paid one half to the district attorney and one half to the informer, share and share alike; and it is hereby made the duty of the district attorney, or his appointed deputy, of the counties of Placer, El Dorado, and Nevada, to prosecute all cases arising under this act.

SEC. 4. All acts, and provisions of any act or parts of acts, conflicting with this act, are hereby repealed.

SEC. 5. This act shall take effect and be in force from and after its passage.

An Act for the protection of certain kinds of fish.

[Approved April 16, 1880; 1880, 106 (Ban. ed. 345).]

Catching of catfish except by hook and line.

SECTION 1. From and after the passage of this act, and until the first day of July, A. D. eighteen hundred and eighty-two, it shall be unlawful for any person to catch any catfish in any of the public waters of this state except by means of a hook and line.

Misdemeanor.

SEC. 2. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be punished as follows: For the first offense, by a fine of not less than fifty dollars, or imprisonment in the county jail for not less than fifty days, or both such fine and imprisonment; for the second and each subsequent offense, by a fine of not less than two hundred and fifty dollars, or by imprisonment in county jail for a period of not less than two hundred and fifty days, or both such fine and imprisonment.

Information leading to conviction.

SEC. 3. Any person giving information which leads to the conviction of any person or persons for violating the provisions of this act shall, upon the conviction of such person or persons, be entitled to receive one half of the fine imposed upon such person or persons.

SEC. 4. This act shall be in force and take effect from and after its passage.

An Act to provide for the construction, maintenance, and regulation of fish-ways in streams naturally frequented by salmon, shad, and other migratory fish.

[Approved April 16, 1880; 1880, 121 (Ban. ed. 387).]

This act, which prescribes the duties of the fish commissioners as to fish-ways, etc., also makes it a misdemeanor to injure or destroy such fish-ways or take fish except by hook and line within three hundred feet of such fish-ways, is given in full in the Political Code, after section 642.

An Act relating to fishing in the waters of this state.

[Approved April 23, 1880; 1880, 123 (Ban. ed. 388).]

This act was held unconstitutional: *In re Ah Chong*, 5 Pac. C. L. J. 451.

CHAPTER II.

OF OTHER AND MISCELLANEOUS OFFENSES.

638. *Neglect or postponement out of regular order of telegraphic messages.*

SEC. 638. Every agent, operator, or employee of any telegraph office, who willfully refuses or neglects to send any message received at such office for transmission, or willfully postpones the same out of its order, or willfully refuses or neglects to deliver any message received by telegraph, is guilty of a misdemeanor. Nothing herein contained shall be construed to require any message to be received, transmitted, or delivered, unless the charges thereon have been paid or tendered, nor to require the sending, receiving, or delivery of any message counseling, aiding, abetting, or encouraging treason against the government of the United States or of this state, or other resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime.

Stats. 1862, 289, sec. 4.

639. *Agent, operator, or employee using information from messages.*

SEC. 639. Every agent, operator, or employee of any telegraph office who in any way uses or appropriates any information derived by him from any private message passing through his hands, and addressed to any other person, or in any other manner acquired by him by reason of his trust as such agent, operator, or employee, or trades or speculates upon any such information so obtained, or in any manner turns, or attempts to turn, the same to his own account, profit, or advantage, is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Stats. 1862, 289, sec. 3, modified.

640. *Clandestinely learning the contents of a telegraphic message.*

SEC. 640. Every person who, by means of any machine, instrument, or contrivance, or in any other manner, willfully and fraudulently reads or attempts to read any message, or to learn the contents thereof, whilst the same is being sent over any telegraph line, or willfully and fraudulently, or clandestinely, learns or attempts to learn the contents or meaning of any message, while the same is in any telegraph office, or is being received thereat or sent therefrom, or who uses or attempts to use, or communicates to others, any information so obtained, is punishable as provided in section six hundred and thirty-nine.

641. *Bribing telegraphic operator.*

SEC. 641. Every person who, by the payment or promise of any bribe, inducement, or reward, procures or attempts to procure any telegraph agent, operator, or employee to disclose any private message, or the contents, purport,

substance, or meaning thereof, or offers to any such agent, operator, or employee any bribe, compensation, or reward for the disclosure of any private information received by him by reason of his trust as such agent, operator, or employee, or uses or attempts to use any such information so obtained, is punishable as provided in section six hundred and thirty-nine.

"Stats. 1862, 290, sec. 7, modified. The grade of punishment provided in the three preceding sections has been increased from that of a misdemeanor to that of a felony:" Commissioners' note.

642. *Collecting tolls, etc., at San Francisco, without authority of harbor commissioners.*

SEC. 642. Every person who collects any toll, wharfage, or dockage, or lands, ships, or removes any property upon or from any portion of the water-front of San Francisco, or from or upon any of the wharves, piers, or landings under the control of the board of state harbor commissioners, without being by such board authorized so to do, is guilty of a misdemeanor.

Stats. 1864, 145, sec. 11.

643. *Violations of the provisions of the chapter relating to police regulations of San Francisco harbor.*

SEC. 643. Every person who violates any of the provisions of the laws of this state relating to sailor boarding-houses and shipping offices in San Francisco, or who receives any gratuity or reward other than as therein provided, for the performance of any services under a license issued pursuant to the provisions of such laws, is guilty of a misdemeanor.

Stats. 1870, 244.

644. *Enticing seamen to desert.*

SEC. 644. Every person who entices seamen to desert from any vessel lying in the waters of this state, and on board of which they have shipped for a term or voyage unexpired at the time of such enticement, is guilty of a misdemeanor.

Stats. 1853, 186, sec. 1.

645. *Harboring deserting seamen.*

SEC. 645. Every person who harbors or secretes any seaman, knowing him to be shipped, and with a view to persuade or enable him to desert, is guilty of a misdemeanor.

Stats. 1853, 186, sec. 2.

646. *Aiding apprentices to run away or harboring them.*

SEC. 646. Every person who willfully and knowingly aids, assists, or encourages to run away, or who harbors or conceals any person bound or held to service or labor, is guilty of a misdemeanor.

Stats. 1858, 137, sec. **Apprentices:** Civ. Code, sec. 264.

647. *Vagrants.*

SEC. 647. Every person (except a California Indian), without visible means of living, who has the physical ability to work, and who does not for the space of ten days seek employment, nor labor when employment is offered him; every healthy beggar who solicits alms as a business; every person who roams about from place to place without any lawful business; every idle or dissolute person, or associate of known thieves, who wanders about the streets at late or unusual hours of the night, or who lodges in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof; every lewd and dissolute person, who lives in and about houses of ill-fame, and every common pros-

titute and common drunkard—is a vagrant, and punishable by imprisonment in the county jail not exceeding ninety days.

Stats. 1863, 770, sec. 1.

648. *Issuing or circulating paper money.*

SEC. 648. Every person who makes, issues, or puts in circulation any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, except as authorized by the laws of the United States, for the first offense is guilty of a misdemeanor, and for each and every subsequent offense is guilty of felony.

Stats. 1855, 128, sec. 1, 2. Compare also Civ. Code, sec. 356.

649. *Officers of fire department issuing false certificates of exemption.*

SEC. 649. Every officer of a fire department who willfully issues or causes to be issued any certificate of exemption to a person not entitled thereto is guilty of a misdemeanor.

Stats. 1864, 257, sec. 7.

650. *Sending letters threatening to expose another.*

SEC. 650. Every person who knowingly and willfully sends or delivers to another any letter or writing, whether subscribed or not, threatening to accuse him or another of a crime, or to expose or publish any of his failings or infirmities, is guilty of a misdemeanor.

"This is founded upon part of section 110 of the crimes and punishment act: Stats. 1850, 229. The portion of that section relating to sending threatening letters is incorporated in section 523, *ante*, chapter 7, relating to extortion:" Commissioners' note.

651. *Requiring wards or apprentices to work more than eight hours.*

SEC. 651. Every person having a minor child under his control, either as a ward or an apprentice, who, except in vinicultural or horticultural pursuits, or in domestic or household occupations, requires such child to labor more than eight hours in any one day, is guilty of a misdemeanor.

Stats. 1868, 63.

An Act to protect the wages of labor and the salaries and fees of subordinate officers.

[Approved April 1, 1872; 1871-2, 951.]

Employer taking wages of laborer.

SECTION 1. Every person who employs laborers upon the public works, and who takes, keeps, or receives any part or portion of the wages due to such laborers from the state or municipal corporation for which such work is done, is guilty of a felony.

Officer taking salary or fees of subordinate.

SEC. 2. Every officer of the state, or any county, city, or township therein, who keeps or retains any part or portion of the salary or fees allowed by law to his deputy, clerk, or subordinate officer, is guilty of a felony.

SEC. 3. This act shall be in force from and after its passage.

652. *Officer or member of national guard failing to attend parade, obey orders, or discharge duty.*

SEC. 652. Every commissioned officer of the national guard who willfully fails to attend any parade or encampment, and every member of the national guard who neglects or refuses to obey the lawful command of his superior on any day of parade or encampment, or to perform such military duty as may be lawfully required of him, is punishable by a fine of not less than five nor more than one hundred dollars.

Disobeying orders: Sec. 1930, Pol. Code. **Parades and drills:** Secs. 2018-2030.

653. *Member of national guard failing to attend parade, etc., when notified.*

SEC. 653. Every member of the national guard who, when duly notified, fails to appear at a parade, or who disobeys any lawful order, or who uses disrespect-

ful language towards his superior, or who commits any act of insubordination, is guilty of a misdemeanor.

654. *Upbraiding, insulting, or abusing public school-teacher.*

SEC. 654. Every parent, guardian, or other person who upbraids, insults, or abuses any teacher of the public schools, in the presence or hearing of a pupil thereof, is guilty of a misdemeanor. [*New section, approved March* 30, 1874; *Amendments* 1873–4, 435; *took effect July* 1, 1874.]

This new section has the same number as the first section in the next title.

TITLE XVI.

GENERAL PROVISIONS.

654. *Acts made punishable by different provisions of this code.*

SEC. 654. An act or omission which is made punishable in different ways by different provisions of this code may be punished under either of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other. In the cases specified in sections six hundred and forty-eight, six hundred and sixty-seven, and six hundred and sixty-eight, the punishments therein prescribed must be substituted for those prescribed for a first offense, if the previous conviction is charged in the indictment and found by the jury.

Increased punishment: Secs. 666, note, 667, note.
Once in jeopardy: Sec. 687, note.

655. *Acts punishable under foreign law.*

SEC. 655. An act or omission declared punishable by this code is not less so because it is also punishable under the laws of another state, government, or country, unless the contrary is expressly declared.

656. *Foreign conviction or acquittal.*

SEC. 656. Whenever on the trial of an accused person it appears that upon a criminal prosecution under the laws of another state, government, or country, founded upon the act or omission in respect to which he is on trial, he has been acquitted or convicted, it is a sufficient defense.

Foreign conviction or acquittal: See also sec. 668.

"This section is intended to apply in cases where the foreign acquittal or conviction took place in respect to the particular act or omission charged against the accused upon the trial in this state, and is not restricted to cases where the accused was tried abroad under the same charge:" Commissioners' note.

Once in jeopardy: Sec. 687, note.
Jurisdiction of crimes: Sec. 777, note.

657. *Contempts, how punishable.*

SEC. 657. A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

Criminal contempts: See sec. 166.

658. *Mitigation of punishment in certain cases.*

SEC. 658. When it appears, at the time of passing sentence upon a person convicted upon indictment, that such person has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

659. *Aiding in misdemeanor.*

SEC. 659. Whenever an act is declared a misdemeanor, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act is guilty of a misdemeanor.

Accessaries defined: Sec. 32. **Accessaries, how punished**: Sec. 33.

660. *Sending letters, when deemed complete.*

SEC. 660. In the various cases in which the sending of a letter is made criminal by this code, the offense is deemed complete from the time when such letter is deposited in any post-office, or any other place, or delivered to any person with intent that it shall be forwarded.

Extortion: Sec. 518, note.

Threatening letters.—Sending with intent to extort money: Sec. 523. In the case of *Rex* v. *Williams*, 2 Camp. 506, where the indictment was for sending a libelous letter, the court said: "There was a sufficient publication in Middlesex by putting the letter into the post-office there with intent that it should be delivered to the prosecutor elsewhere. Had it never been delivered the defendant's offense would have been the same:" See 2 Whart. Crim. L., 8th ed., sec. 1666 a.

661. *Removal from office for violation or neglect of official duty by public officers.*

SEC. 661. In addition to the penalty affixed by express terms, to every neglect or violation of official duty on the part of public officers, state, county, city, or township, where it is not so expressly provided, they may, in the discretion of the court, be removed from office.

662. *Omission to perform duty, when punishable.*

SEC. 662. No person is punishable for an omission to perform an act where such act has been performed by another person acting in his behalf and competent by law to perform it.

Indictable omissions: Sec. 26, in note.

663. *Attempts to commit crimes, when punishable.*

SEC. 663. Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the court, in its discretion, discharges the jury and directs such person to be tried for such crime.

664. *Attempts to commit crimes, how punishable.*

SEC. 664. Every person who attempts to commit any crime, but fails or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows:

1. If the offense so attempted is punishable by imprisonment in the state prison for five years or more, or by imprisonment in a county jail, the person guilty of such attempt is punishable by imprisonment in the state prison, or in a county jail, as the case may be, for a term not exceeding one half the longest term of imprisonment prescribed upon a conviction of the offense so attempted;

2. If the offense so attempted is punishable by imprisonment in the state prison for any term less than five years, the person guilty of such attempt is punishable by imprisonment in the county jail for not more than one year;

3. If the offense so attempted is punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one half the largest fine which may be imposed upon a conviction of the offense so attempted;

4. If the offense so attempted is punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one half the longest term of imprisonment and one

half the largest fine which may be imposed upon a conviction for the offense so attempted.

Subds. 1 and 2. Attempts to commit crime: See the construction of subdivisions 1 and 2 by the supreme court in *Ex parte Hope*, 59 Cal. 423.

665. *Restrictions upon the preceding sections.*

SEC. 665. The last two sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

666. *Second offense, after conviction of former offense.*

SEC. 666. Every person who, having been convicted of any offense punishable by imprisonment in the state prison, commits any crime after such conviction, is punishable therefor, as follows:

1. If the offense of which such person is subsequently convicted is such that, upon a first conviction, an offender would be punishable by imprisonment in the state prison for any term exceeding five years, such person is punishable by imprisonment in the state prison not less than ten years;

2. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the state prison for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the state prison not exceeding ten years;

3. If the subsequent conviction is for petit larceny, or any attempt to commit an offense which, if committed, would be punishable by imprisonment in the state prison not exceeding five years, then the person convicted of such subsequent offense is punishable by imprisonment in the state prison not exceeding five years.

Second offense.—Subd. 1. Conviction of assault to rob, having been previously convicted of grand larceny, renders defendant liable to imprisonment for his natural life, or for at least ten years: *People* v. *Brooks*, 3 West Coast Rep. 53.

Subd. 2. A defendant convicted of burglary in the second degree and of a previous conviction of grand larceny may be sentenced to imprisonment for a term of ten years: *People* v. *Brooks*, 3 West Coast Rep. 57.

Increased punishment.—In *People* v. *Stanley*, 47 Cal. 113, it was held that to subject a person to an increased punishment for a second offense, under this section, was not putting him twice in jeopardy for the same offense. Similar decisions have been rendered in other states under like statutes: *Rand* v. *Commonwealth*, 9 Gratt. 743; *Ross's Case*, 2 Pick. 170; *Plumbly* v. *Commonwealth*, 2 Met. 413; see sec. 667, note. At the session of the legislature of 1880, section 969, which pointed out the manner that a former conviction should be pleaded, was repealed. In *People* v. *Carlton*, 7 Pac. C. L. J. 108, it was held that the charge of a previous conviction could be made in an information as well as in an indictment, but the way that it should be set forth in an indictment or information, section 969 having been repealed, was not pointed out. In *People* v. *Johnson*, Id. 168, notwithstanding the defendant pleaded guilty to the charge of former conviction, it was held proper for the prosecution to ask him on cross-examination, for the purpose of impeaching him, whether he had not been previously convicted of such offense. In *People* v. *Delany*, 49 Cal. 394, the defendant pleaded "guilty of the offense charged in the indictment," which charged the offense of petit larceny committed after a previous conviction for petit larceny, and it was held that she must be sentenced for a felony.

Subd. 3. A conviction of petit larceny and a former conviction for grand larceny subjects a party to be punished as for a felony: *People* v. *King*, 64 Cal. 338. Conviction of petit larceny after previous conviction of petit larceny: *People* v. *Carlton*, 57 Id. 559.

Constitutionality of such legislation as is had in this section was upheld in *People* v. *King*, 64 Cal. 338, citing *Ex parte Gutierrez*, 45 Id. 429; *Plumbly* v. *Commonwealth*, 2 Met. 413. See note to next section.

Previous conviction, duty of jury to find on: See sec. 1158, *post*.

Practice on confessing previous conviction: Secs. 1093, 1158, *post*.

667. *Second offense after conviction of attempt to commit state-prison offense.*

SEC. 667. Every person who, having been convicted of petit larceny, or of an attempt to commit an offense which, if perpetrated, would be punishable by

imprisonment in the state prison, commits any crime after such conviction, is punishable as follows:

1. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the state prison for life, at the discretion of the court, such person is punishable by imprisonment in such prison during life;

2. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the state prison for any term less than for life, such person is punishable by imprisonment in such prison for the longest term prescribed, upon a conviction of such first offense;

3. If the subsequent conviction is for petit larceny, or for an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the state prison, then such person is punishable by imprisonment in such prison not exceeding five years.

Constitutionality.—In *Ex parte Gutierrez*, 45 Cal. 432, this section was held not to be objectionable as an *ex post facto* law, because the first offense was committed before the section was adopted. The section provides for the punishment of certain offenses, and makes the degree of punishment dependent upon whether the person has ever before been convicted of a similar offense, and it makes no difference whether such first offense was committed prior to the adoption of the law or not. "By the rule announced in the code, any person in the situation of the prisoner, that is, any person who had already been convicted of the offense of petit larceny, who should again, and subsequently to the taking effect of the code, commit the offense of petit larceny, is to be deemed a felon, and punished by imprisonment in the state prison. The act to be punished is, however, only that act done by the prisoner after the code took effect; and therefore, in no sense can the code be said to become *ex post facto* when applied to the case of the prisoner." This decision was followed in *People* v. *King*, 64 Cal. 338.

Challenges accused entitled to.—Under this and the following sections to 671 inclusive, the defendant being charged with robbery, and having been previously convicted of petit larceny, he was entitled to twenty peremptory challenges: *People* v. *O'Neil*, 61 Cal. 435.

668. *Foreign conviction for former offense.*

SEC. 668. Every person who has been convicted in any other state government, or country, of an offense which, if committed within this state, would be punishable by the laws of this state by imprisonment in the state prison, is punishable for any subsequent crime committed within this state in the manner prescribed in the last two sections, and to the same extent as if such first conviction had taken place in a court of this state.

See also sec. 656.

669. *Second term of imprisonment, when to commence.*

SEC. 669. When any person is convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be.

670. *When term of imprisonment commences, etc.*

SEC. 670. The term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant at the place of imprisonment, and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

671. *Imprisonment for life.*

SEC. 671. Whenever any person is declared punishable for a crime by imprisonment in the state prison for a term not less than any specified number of

years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than that prescribed.

Imprisonment for life.—See application of this section to a conviction of assault to rob after a previous conviction of grand larceny, under subdivision 1 of section 666: *People* v. *Brooks*, 3 West Coast Rep. 53.

672. *Fine may be added to imprisonment.*

SEC. 672. Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender, not exceeding two hundred dollars, in addition to the imprisonment prescribed.

673. *Civil rights of convict suspended.*

SEC. 673. A sentence of imprisonment in a state prison for any term less than for life suspends all the civil rights of the person so sentenced, and forfeits all public offices and all private trusts, authority, or power during such imprisonment.

674. *Civil death.*

SEC. 674. A person sentenced to imprisonment in the state prison for life is thereafter deemed civilly dead.

675. *Limitation on two preceding sections.*

SEC. 675. The provisions of the last two preceding sections must not be construed to render the persons therein mentioned incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property. [*Amendment, approved March* 30, 1874; *Amendments* 1873-4, 435; *took effect July* 1, 1874.]

676. *Person of convict protected.*

SEC. 676. The person of a convict sentenced to imprisonment in the state prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

677. *Forfeitures.*

SEC. 677. No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law; and all forfeitures to the people of this state, in the nature of a deodand, or where any person shall flee from justice, are abolished.

"The very salutary and almost indispensable provisions contained in this title were either wholly taken from or suggested by the Penal Code of New York, 272-279, and seemed to be so obviously appropriate as a complement to a thorough administration of penal law, that their future use will give rise to the inquiry, How did our courts succeed so well without them? The act of April 16, 1850—crimes and punishments of this state—was taken almost literally from the New York code, hence their great similarity, notwithstanding very many changes have been made during a series of years in legislating in each of the states. It would be wise and beneficial if the penal laws of all the states were exact copies of each other, so that the decisions of the courts of one might be available to the others:" Code commissioners' note.

678. *Valuation of property under this code to be estimated in gold coin.*

SEC. 678. Whenever in this code the character or grade of an offense, or its punishment, is made to depend upon the value of the property, such value shall be estimated exclusively in United States gold coin. [*New section, approved March* 30, 1874; *Amendments* 1873-4, 435; *took effect July* 1, 1874.]

PART II.

OF CRIMINAL PROCEDURE.

PRELIMINARY PROVISIONS.

681. *No person punishable but on legal conviction.*

SEC. 681. No person can be punished for a public offense, except upon a legal conviction in a court having jurisdiction thereof.

Constitutional guaranty: Art. 1, sec. 13, Const. Cal.

Conviction of public offense: See *post*, sec. 689.

Conviction.—The ordinary legal meaning of the term "conviction," when used to designate a particular stage of a criminal prosecution triable by a jury, is the confession of the accused in open court, or the verdict returned against him by the jury, which ascertains and publishes the fact of his guilt; while "judgment" or "sentence" is the appropriate word to denote the action of the court before which the trial is had, declaring the consequences to the convict of the fact thus ascertained: *Commonwealth* v. *Lockwood*, 109 Mass. 323. A conviction is the legal proceeding of record which ascertains the guilt of a party, and upon which the sentence or judgment is founded: 1 Bouv. Law Dict. 362. The conviction, in this state, may be had: 1. By verdict of a jury; 2. On confession by defendant in open court; 3. By judgment of an authorized court in certain cases, without confession, or the verdict of a jury: See sec. 689.

The rights of persons charged with crime are secured to them by section 13, article 1, of the constitution.

Trial: Sec. 1093, note.

Verdict: Sec. 1147, note.

Judgment, form of: Sec. 1202, note.

Execution: Sec. 1213, note.

682. *Public offenses, how prosecuted.*

SEC. 682. Every public offense must be prosecuted by indictment or information, except:

1. Where proceedings are had for the removal of civil officers of the state;

2. Offenses arising in the militia when in actual service, and in the land and naval forces in time of war, or which the state may keep, with the consent of congress, in time of peace;

3. Offenses tried in justices' and police courts. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 10 (*Ban. ed.* 155); *took effect immediately.*]

Cited generally: *People* v. *Carlton*, 57 Cal. 559, 561.

Indictment: Sec. 949, note.

Information: Sec. 809, note.

Removal of officers by impeachment: Sec. 737, note.

Removal of officers otherwise than by impeachment: Sec. 758, note.

Courts-martial: See Pol. Code, secs. 2076–2084.

Justices' and police courts: Sec. 1426, note.

683. *Criminal action defined.*

SEC. 683. The proceeding by which a party charged with a public offense is accused and brought to trial and punishment is known as a criminal action.

684. *Parties to a criminal action.*

SEC. 684. A criminal action is prosecuted in the name of the people of the state of California, as a party, against the person charged with the offense.

Violation of city ordinance.—An action in the police court for the violation of a city ordinance, and to enforce the penalty thereof, should be brought in the name of the people: *Santa Barbara* v. *Sherman*, 61 Cal. 57.

685. *The party prosecuted known as defendant.*

SEC. 685. The party prosecuted in a criminal action is designated in this code as the defendant.

686. *Rights of defendant in a criminal action.*

SEC. 686. In a criminal action the defendant is entitled:

1. To a speedy and public trial;

2. To be allowed counsel as in civil actions, or to appear and defend in person and with counsel;

3. To produce witnesses on his behalf, and to be confronted with the witnesses against him, in the presence of the court, except that where the charge has been preliminarily examined before a committing magistrate and the testimony taken down by question and answer in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness; or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally in the like manner in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness, the deposition of such witness may be read, upon its being satisfactorily shown to the court that he is dead or insane, or cannot with due diligence be found within the state.

Subd. 1. Public trial.—An order excluding from the court-room such of the jurors summoned for the term as are not impaneled to try the case is not a deprivation of the right of public trial: *People* v. *Sprague*, 54 Cal. 491.

Subd. 2. Argument of counsel.—The court may limit the defendant's counsel to a reasonable time in the argument of a case; yet if without consent such limitation is imposed, and the accused is thereby deprived of the opportunity of a full defense, a new trial will be granted: *People* v. *Keenan*, 13 Cal. 581.

Subd. 3. Confronted with witnesses.—"There can be little doubt of the meaning of the foregoing citation [this subdivision]. The defendant is entitled 'to be confronted with the witnesses against him, in the presence of the court,' that is, the court in which 'the action' is being tried, except in the instances specified." Therefore, reporter's notes of testimony given by a witness at a former trial and now out of the state are inadmissible: *People* v. *Chung Ah Chue*, 57 Cal. 567, 568.

Depositions taken upon a preliminary examination before a committing magistrate may be used upon the trial of a defendant if it appears that the witness is dead, insane, or cannot be found within the state: *People* v. *Curtis*, 50 Cal. 96. Where, however, the witness is within the reach of a subpœna, but too unwell to appear in court, his deposition is not admissible: *People* v. *Bojorquez*, 55 Id. 463; see *People* v. *Gannon*, 61 Id. 476, where the court was justified in finding that the witness could not with reasonable and due diligence be found within the state.

Depositions to be admissible at all as evidence must be taken in the manner and form, and certified as required by section 869: *People* v. *Morine*, 54 Cal. 575. The certificate required by the latter section must set forth an actual compliance with all the requirements of the statute: *Williams* v. *Chadbourne*, 6 Id. 559; *People* v. *Morine*, 54 Id. 575. The jurat of the committing magistrate is not such a certificate as is required: *People* v. *Morine*, Id. 577. This section and section 869, in regard to preliminary examination and the admissibility of depositions therein taken, are constitutional: *People* v. *Oiler*, 4 West Coast Rep. 383.

Depositions as evidence: Secs. 869, 1345, 1362, and notes to these sections.

687. *Second prosecution for the same offense prohibited*

SEC. 687. No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted or acquitted.

Jeopardy: See a valuable discussion of this subject in the note to *Roberts* v. *State*, 58 Cal. 536, 548. In both the state and the federal constitutions it is provided that no person shall be twice put in jeopardy for the same offense: Const. Cal., sec. 13, art. 1; U. S. Const., amend. 5. It is held that when a person is once placed upon his trial before a competent court and jury, charged with his case upon a valid indictment, he is in jeopardy, unless such jury be discharged without rendering a verdict from a legal necessity or cause beyond the control of the court, such as death, sickness, or insanity of one of the jury, or of the prisoner, or the court, or unless the jury be discharged by consent of the prisoner: *People* v. *Webb*, 38 Cal. 467; *Ex parte Hartman*, 44 Id. 32. Sickness of juror: See *People* v. *Stewart*, 64 Id. 60. Among these unavoidable necessities is the inability of the jury to agree after a reasonable time for deliberation: *People* v. *Cage*, 48 Id. 324; *Ex parte McLaughlin*, 41 Id. 211. So, also, when the defendant during the trial for a felony flees, and not being able to be found, the jury is discharged: *People* v. *Higgins*, 59 Id. 357. If the defendant be acquitted on the ground of variance between the allegations in the indictment and the proofs, and the variance is immaterial, he cannot be again tried for the same offense. But if the variance be material, the acquittal will not bar another prosecution: *People* v. *Hughes*, 41 Id. 234; *People* v. *McNealy*, 17 Id. 332. Where the defendant is tried and convicted, and does not move for new trial, but appeals to the supreme court, and that court reverses the judgment and or-

ders a new trial, the former conviction is no bar to a new trial: *People* v. *Olwell*, 28 Id. 456; *People* v. *Barric*, 49 Id. 342. Where an indictment is set aside on defendant's motion, and the case ordered submitted to another grand jury, it does not amount to an acquittal: *People* v. *Varnum*, 53 Id. 630; *Ex parte Cahill*, 52 Id. 463; *People* v. *March*, 6 Id. 543. Nor does the examination and dismissal of a charge by the grand jury, without an order by the court for a resubmission of the case to another grand jury, amount to jeopardy: *Ex parte Clarke*, 54 Id. 412. Where the verdict is so defective and uncertain that no judgment can pass, it may be set aside, and the proceedings theretofore had will be no bar to another trial: *People* v. *Baza*, 53 Id. 690. The defendant was indicted for manslaughter, and on his trial the court, against his consent, discharged the jury, being of opinion that the evidence showed defendant to be guilty of murder; defendant was afterwards indicted and tried for murder for the same homicide: *Held*, that he is twice put in jeopardy: *People* v. *Hunckeler*, 48 Id. 331. Where one is subjected to increased punishment for a second offense, he is not twice put in jeopardy for the same offense. The increased punishment is not a punishment for the first offense, but is inflicted because of persistence in crime: *People* v. *Stanley*, 47 Id. 113; *People* v. *Lewis*, 64 Id. 401. The pendency of one information does not affect the right of the prosecution to present another against defendant for the same offense: *Kalloch* v. *Superior Court*, 56 Id. 229. A defendant indicted for an offense is indicted for every lesser grade that may be included under it, and if convicted of one of the lesser offenses, it amounts to an acquittal of all offenses higher than that of which he is convicted, and if a new trial is granted, he cannot be tried for any higher offense than that of which he was convicted: *People* v. *Gilmore*, 4 Id. 376; *People* v. *Apgar*, 35 Id. 389. And see *People* v. *Helbing*, 61 Id. 620. But the lesser does not include the greater, and a conviction on an indictment for an assault is not a bar to a subsequent trial for battery: Id. "To entitle a defendant to the plea of *autrefois convict* or *acquit*, it is necessary that the offense charged be the same in law and in fact:" Id. If the defendant, when arraigned, pleads guilty, and his plea is entered of record, such proceeding amounts to a conviction, and is a good defense if he is again indicted for the same offense, although no judgment was pronounced upon the plea of guilty: *People* v. *Goldstein*, 32 Id. 432. It has been said that if the district attorney obtain the discharge of one of several defendants jointly indicted, in order to use such defendant as a witness for the people, such discharge from the indictment would, in its legal effect, be an acquittal and bar another prosecution: *People* v. *Bruzzo*, 24 Id. 41.

For plea of previous conviction or acquittal, or of once in jeopardy, see sec. 1016, note.

Dismissal no bar: See sec. 999.

688. *No person to be witness against himself in criminal action, or unnecessarily restrained.*

SEC. 688. No person can be compelled, in a criminal action, to be a witness against himself; nor can a person charged with a public offense be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

Defendant as a witness.—A person cannot be compelled, in any criminal case, to be a witness against himself: Const. Cal., sec. 13, art. 1; U. S. Const., amend. 5; *People* v. *King*, 64 Cal. 338. But he may testify in his own behalf, and if he does so is subject to be cross-examined: Sec. 1323, note.

Unnecessary restraint.—Where the court required the prisoner, during the progress of his trial, to appear and remain with chains and shackles upon his limbs, without any evident necessity of so doing, it was held such a violation of the rights of defendant as entitled him to a new trial: *People* v. *Harrington*, 42 Cal. 165. For right of defendant to be admitted to bail, see section 1268, note.

689. *No person to be convicted but upon verdict or judgment.*

SEC. 689. No person can be convicted of a public offense unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon judgment against him upon a demurrer in the case mentioned in section ten hundred and eleven, or upon a judgment of a court, a jury having been waived in a criminal case not amounting to felony. [*Amendment, approved April* 25, 1880; *Amendments* 1880, 4 (*Ban. ed.* 9); *took effect immediately.*]

Cited in *People* v. *King*, 64 Cal. 338.

Refusal to plead after demurrer overruled: Sec. 1011, note.

Preliminary provisions.—The following is taken from the commissioners' note, published in 1872: "Under this chapter of 'preliminary provisions,' it may be generally said that as a necessary concomitant to all statutes declaring acts or omissions to be criminal, a mode of procedure to inflict the penalty provided must exist. Heretofore, if the statute did not provide a mode of procedure, the common law of England, as it is familiarly known, but which, from the fact that it was the common law of our mother country, has been so frequently adopted by statute, so universally recognized and acted upon by our courts for supplying omissions and defects in statutory law, that it is by them recognized as one of our own naturalized and well-established institutions, and may now be well called the common law of the United States, furnished a method of

procedure which was usually pursued by them. Some of the more prominent features of this system are: 1. The presumption of innocence, and right to reasonable doubt of guilt; 2. Not to be held to answer except by inquest of a grand jury; 3. Trial by jury of his peers; 4. The determination of guilt or innocence without reference to general character; 5. Not to require prisoner to criminate himself nor to exculpate himself by giving his testimony; 6. Must not be tried twice for the same offense; 7. Nor be punished for an act done prior to the passage of the statute making it an offense, nor by a severer punishment than that there provided. It may be correctly remarked that the custom of some continental European systems of allowing general character, habits of life, previous history, and other surroundings to be subjects of inquiry by the court in determining the probabilities of the guilt or innocence of one accused of crime, whilst it has not received favor in our courts, or at least has no *status* as furnishing evidence for the defense, yet the permission given by the statutes of several states and this code to the defendant to testify in his own defense, looks to the observant like a step in the direction of relaxing rules heretofore rigidly observed. The general principles of our system, here enumerated and contained in the preceding sections, are the subjects of constitutional guaranty and protection, and this code consequently rigidly adheres to them, except that a defendant, if he desires to do so, may testify in his own behalf."

TITLE I.

OF THE PREVENTION OF PUBLIC OFFENSES.

CHAPTER I. OF LAWFUL RESISTANCE 692
II. OF THE INTERVENTION OF THE OFFICERS OF JUSTICE 697
III. SECURITY TO KEEP THE PEACE 701
IV. POLICE IN CITIES AND TOWNS, AND THEIR ATTENDANCE AT EXPOSED PLACES 719
V. SUPPRESSION OF RIOTS 723

CHAPTER I.

OF LAWFUL RESISTANCE

692. *Lawful resistance, by whom made.*

SEC. 692. Lawful resistance to the commission of a public offense may be made:

1. By the party about to be injured;
2. By other parties.

Repulsion of felonious assault.—East, in his Pleas of the Crown, thus states the resistance a man may use in preventing the commission of a crime: "A man may repel force by force, in defense of his person, habitation, or property, against one who manifestly intends or endeavors, by violence or surprise, to commit a known felony, such as murder, rape, robbery, arson, burglary, and the like, upon either. In these cases he is not obliged to retreat, but may pursue his adversary until he has secured himself from all danger; and if he kill him in so doing, it is called justifiable self-defense:" East P. C. 272. The fear that a man intends to commit a crime, however well grounded, unaccompanied by some overt act indicative of such intention, will not justify a killing of the party by way of prevention: Id. 272; *Stoneman* v. *Commonwealth*, 25 Gratt. 887, and cases there cited. The right to defend one's person results from necessity: *People* v. *Pool*, 27 Cal. 572. A person may lawfully oppose another who is committing a felony, even to the taking of his life; and although his justification rests upon the right of self-defense, it also depends upon the authority with which the law invests every man to resist the commission of a felony: 1 Bish. Crim. L., sec. 849; *Aaron* v. *State*, 31 Ga. 167; *Staten* v. *State*, 30 Miss. 619. In the latter case it was held that a person may justifiably slay another if he has reasonable ground to apprehend a design on the part of latter to commit a felony on or do some great personal injury to his wife, and there shall be imminent danger of such design being accomplished. Although a man may use as much force as is necessary for the protection of his person or property, still he is not entitled, except in extreme cases, to endanger human life, or commit great bodily harm. A person cannot kill another justifiably, unless necessary to save life or limb, or prevent the commission of a great crime. So if a person kill another to prevent the commission of a trespass, he is guilty of murder: 1 Whart. Crim. L., 8th ed., sec. 484. He is not justified in using extreme measures when the resort to moderate force would furnish the required protection, or prevent the commission of a public offense. This right to use such resistance as may be necessary to prevent the commission of a crime is not confined to the prevention of offenses against

his own person, but extends to his family, or of some member thereof, and also to the protection of property lawfully in his possession against any illegal attempt to take or injure it: See next section; Civ. Code, sec. 50; Archb. Crim. Pl. 693, 697; 1 Bish. Crim. L., sec. 877; *Staten* v. *State*, 30 Miss. 619; *Stoneman* v. *Commonwealth*, 25 Gratt. 887; *Bristow* v. *Commonwealth*, 15 Id. 634; *Patten* v. *People*, 18 Mich. 314.

Prevention of felony: Sec. 197, note.

Self-defense: Sec. 197, note.

Bare fear not sufficient to justify killing: Sec. 198, note.

693. *By the party, in what cases and to what extent.*

SEC. 693. Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person, or his family, or some member thereof;

2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

694. *By other parties in what cases.*

SEC. 694. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

CHAPTER II.

OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

697. *Intervention of officers, in what cases.*

SEC. 697. Public offenses may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace;

2. By forming a police in cities and towns, and by requiring their attendance in exposed places;

3. By suppressing riots.

Subd. 1. Security to keep the peace. "In all cases of misdemeanor the court has, from the common law, authority, to be exercised or not, as a sound discretion may dictate, to require as a part of the sentence that the defendant give bonds to keep the peace and be of good behavior:" 1 Bish. Crim. L., sec. 945; see *Dunn* v. *Queen*, 12 Ad. & El., N. S., 1031, 1040; *Regina* v. *Hart*, 30 How. St. Tr. 1131, 1194, 1344; *O'Connell* v. *Queen*, 11 Cl. & Fin. 155; *Queen* v. *Dunn*, 12 Jur. 99; *Territory* v. *Nugent*, 1 Mart. (La.) 103; 2 Whart. Crim. L., 8th ed., sec. 1555; see secs. 701-714.

Subd. 2. Police force: See secs. 719, 720.

Subd. 3. Suppression of riots.—It is the duty of the sheriff, or any other officer of the peace, to do everything that is within his power to prevent or suppress a riot. It is not necessary to wait until the unlawful assembly ripens into an actual riot: 2 Whart. Crim. L., 8th ed., sec. 1555. "For it is better to anticipate more dangerous results, by energetic intervention at the inception of a threatened breach of the peace, than by delay to permit the tumult to acquire such strength as to demand for its suppression those urgent measures which should be reserved for great extremities:" Id. Such officers may arrest such offenders and compel them to give security to keep the peace. They may also call upon others to assist in the arrest, and any person so called upon is bound to do everything in his power to keep the peace: *King* v. *Pinney*, 3 Barn. & Adol. 947; 5 Car. & P. 254; *Regina* v. *Neale*, 9 Id. 434; 2 Whart. Crim. L., 8th ed., secs. 1555, 1584. "Citizens may, of their own authority, lawfully endeavor to suppress the riot, and for that purpose may even arm themselves; and whatever is honestly done by them in the execution of that object will be supported and justified by the common law. It is the duty of every citizen to make such endeavor, and when the rioters are engaged in the commission of high crimes, the law protects other persons in repelling them by force." 2 Whart Crim. L., 8th ed., sec. 1555; *Respublica* v. *Montgomery*, 1 Yeates, 419; see secs. 723-733.

Riots: Sec. 404, note.

Officers authorized to preserve peace: Sec. 720.

698. *Persons acting in their aid justified.*

SEC. 698. When the officers of justice are authorized to act in the prevention of public offenses, other persons, who, by their command, act in their aid, are justified in so doing.

CHAPTER III.

SECURITY TO KEEP THE PEACE.

701. *Information of threatened offense.*

SEC. 701. An information may be laid before any of the magistrates mentioned in section eight hundred and eight, that a person has threatened to commit an offense against the person or property of another.

"Stats. 1863, 158. The section referred to is section 103 of the crimes and punishment act of 1851; the word 'information' is used in place of the word 'complaint,' as more expressive. That a named person is menacing or threatening to do towards or against the person or property of another an act which the Penal Code forbids to be done, or is omitting to do that which it commands, must be the subject of the information provided for in the text. The threat of an intention to commit the offense must appear to be one which will be executed unless the person so threatening is further restrained than he seems to be by the fact that the act is in violation of the law:" Commissioners' note.

702. *Examination of complainant and witnesses.*

SEC. 702. When the information is laid before such magistrate he must examine on oath the informer, and any witness he may produce, and must take their depositions in writing, and cause them to be subscribed by the parties making them.

"This should be in concise language, stating all the jurisdictional facts, and should clearly specify the threatened offense, and when reduced to writing and sworn to constitutes the complaint or information upon which the warrant issues:" Commissioners' note.

703. *Warrant of arrest.*

SEC. 703. If it appears from the depositions that there is just reason to fear the commission of the offense threatened, by the person so informed against, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, marshal, or policeman in the state, reciting the substance of the information, and commanding the officer forthwith to arrest the person informed of and bring him before the magistrate.

704. *Proceedings on charges being controverted.*

SEC. 704. When the person informed against is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing and subscribed by the witnesses.

705. *Person complained of, when to be discharged.*

SEC. 705. If it appears that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

No just reason to fear.—The question to be determined is whether the prosecuting witness had just reason to fear at the time the action is commenced, and not when the trial is had: *State* v. *Steward*, 48 Ind. 146; see *State* v. *Sayer*, 35 Id. 379.

706. *Security to keep the peace, when required.*

SEC. 706. If, however, there is just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to keep the peace towards the people of this state, and particularly towards the informer. The undertaking is valid and binding for six months, and may, upon the renewal of the information, be extended for a longer period, or a new undertaking may be required.

Security to keep the peace: Sec. 697, in note.

707. *Effect of giving or refusing to give security.*

SEC. 707. If the undertaking required by the last section is given, the party informed of must be discharged. If he does not give it, the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

708. *Person committed for not giving security, how discharged.*

SEC. 708. If the person complained of is committed for not giving the undertaking required, he may be discharged by any magistrate upon giving the same.

709. *Undertaking to be filed in clerk's office.*

SEC. 709. The undertaking must be filed by the magistrate in the office of the clerk of the county.

710. *Security for assault committed in presence of court or magistrate.*

SEC. 710. A person who, in the presence of a court or magistrate, assaults or threatens to assault another, or to commit an offense against his person or property, or who contends with another with angry words, may be ordered by the court or magistrate to give security, as in this chapter provided, and if he refuse to do so, may be committed as provided in section seven hundred and seven.

711. *Undertaking, when broken.*

SEC. 711. Upon the conviction of the person informed against of a breach of the peace the undertaking is broken.

712. *Undertaking, when and how prosecuted.*

SEC. 712. Upon the district attorney's producing evidence of such conviction to the superior court of the county, the court must order the undertaking to be prosecuted, and the district attorney must thereupon commence an action upon it in the name of the people of this state. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 31 (*Ban. ed.* 198); *took effect immediately.*]

713. *Evidence of breach.*

SEC. 713. In the action the offense stated in the record of conviction must be alleged as a breach of the undertaking, and such record is conclusive evidence of the breach.

714. *Security for the peace not required, except in accordance with this chapter.*

SEC. 714. Security to keep the peace, or be of good behavior, cannot be required except as prescribed in this chapter.

"These proceedings are provided for securing a more perfect respect for the law than their mere existence carries to the person upon whom they are intended to operate. Every one is presumed to know the law, but in many instances, as a matter of fact, the existence of the law is unknown. By these proceedings, therefore, an actual breach of the law may be prevented where an ignorant violation would be punished:" Commissioners' note.

CHAPTER IV.

POLICE IN CITIES AND TOWNS, AND THEIR ATTENDANCE AT EXPOSED PLACES.

719. *Organization and regulation of the police.*

SEC. 719. The organization and regulation of the police, in the cities and towns of this state, is governed by special laws.

720. *Force to preserve peace at public meetings.*

SEC. 720. The mayor or other officer having the direction of the police of a city or town must order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is reasonably apprehended.

Suppression of riots: See sec. 697, subd. 3. "Personal knowledge, or a complaint, or information, as provided in section 701, *ante*, or any other reliable facts coming to the officer, is sufficient, if it induce the belief that a breach of the peace is reasonably to be apprehended:" Commissioners' note.

CHAPTER V.

SUPPRESSION OF RIOTS.

723. *Power of sheriff or other officer in overcoming resistance to process.*

SEC. 723. When a sheriff or other public officer authorized to execute process finds, or has reason to apprehend, that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper to assist him in overcoming the resistance, and if necessary, in seizing, arresting, and confining the persons resisting, their aiders and abettors.

"This section was amended so as to read as published in the text, by act of April 1, 1872, cited in note in lieu of section 433, *ante*. See also note to subdivision 3 of section 697, *ante;* and section 701, *ante*, and note, 'Information;' and section 720, *ante*, and note as to sufficient apprehension:" Commissioners' note.

724. *The officer to certify to court the names of the resisters, etc.*

SEC. 724. The officer must certify to the court from which the process issued the names of the persons resisting, and their aiders and abettors, to the end that they may be proceeded against for their contempt of court.

"This is only to be done in case there has been actual resistance, or proof of threatened resistance, to the execution of process or other performance of official duty:" Commissioners' note.

725. *When governor to order out a military force to aid in executing process.*

SEC. 725. If it appears to the governor that the civil power of any county is not sufficient to enable the sheriff to execute process delivered to him, he must, upon the application of the sheriff of the county, order such portion as shall be sufficient, or the whole if necessary, of the organized national guard or enrolled militia of the state, to proceed to the assistance of the sheriff.

726. *Magistrates and officers to command rioters to disperse.*

SEC. 726. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies, the officials governing the town or city, or the justices of the peace and constables thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of the state, immediately to disperse.

727. *To arrest rioters if they do not disperse.*

SEC. 727. If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present or within the county.

728. *Officers who may order out the military.*

SEC. 728. When there is an unlawful or riotous assembly with the intent to commit a felony, or to offer violence to person or property, or to resist by force

the laws of the state or of the United States, and the fact is made known to the governor, by any justice of the supreme court, or the judge of the superior court, or sheriff of the county, or the mayor or chief of police of a city, or the president of the board of supervisors of the cities and counties of Sacramento and San Francisco, the governor may issue an order directed to the commanding officer of a division or brigade of the organized national guard, or enrolled militia of the state, to order his command, or such part thereof as may be necessary, into active service, and to appear at a time and place therein specified to aid the civil authorities in suppressing violence and enforcing the laws. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 32 (*Ban. ed.* 198); *took effect immediately.*]

729. *Commanding officer and troops to obey the order.*

SEC. 729. The organized national guard or enrolled militia, or such portion thereof as shall be called into active service, as provided in section seven hundred and twenty-eight, must appear at the time and place appointed, fully armed and equipped, and with not less than forty rounds of ball-cartridge to each man, if infantry or cavalry, and with not less than twenty rounds of grape, canister, or round shot, if artillery.

730. *Armed force to obey orders of whom.*

SEC. 730. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, and is placed under the temporary direction of any civil officer, as provided in section seven hundred and thirty-one, it must obey the orders in relation thereto of such civil officer.

731. *Conduct of the troops.*

SEC. 731. Whenever any portion of the national guard or enrolled militia shall have been called into active service to suppress an insurrection or rebellion, to disperse a mob, or to enforce the execution of the laws of this state or of the United States, it shall be competent for the commander-in-chief, or for the general acting in his stead, to place such troops under the temporary direction of the mayor of any city, or of the president of the board of supervisors of the cities and counties of Sacramento and San Francisco, or the person acting in that capacity, of the sheriff of any county, or of any marshal of the United States; and if, in the opinion of such civil officer, it shall become necessary that the troops so called out shall fire or charge upon any mob or body of persons assembled to break or resist the laws, such civil officer shall give a written order to that effect to the superior officer present in command of such troops, who will at once proceed to carry out the order, and shall direct the firing and attack to cease only when such mob or unlawful assembly shall have been dispersed, or when ordered to do so by the proper civil authority. No officer who has been called out to sustain the civil authorities shall, under any pretense, or in compliance with any order, fire blank-cartridges upon any mob or unlawful assemblage, under penalty of being cashiered by a sentence of a court-martial; provided, that nothing in this section shall be construed as prohibiting any such troops from firing or charging upon such mob or assembly without the orders of such civil officers, in case they shall first be attacked or fired upon, or forcibly resisted in discharge of their duty. When the commander-in-chief, or general acting in his stead, shall call troops into active service for the purposes mentioned in this section, and shall not place them

under the temporary direction of any civil officer, the commanding officer shall use his own discretion with respect to the propriety of attacking or firing upon any mob or unlawful assembly.

The preceding sections, 728, 729, 730, 731, were amended so as to read as published in the text, by act of April 1, 1872, cited in note in lieu of section 433, *ante*, repealed.

732. *Governor may in certain cases declare a county in a state of insurrection.*

SEC. 732. When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has been exerted and has not been sufficient to enable the officers having the process to execute it, he may, on the application of the officer, or of the district attorney, or judge of a superior court of the county, by proclamation, published in such papers as he may direct, declare the county to be in a state of insurrection, and may order into the service of the state such number and description of the organized national guard, or volunteer uniformed companies, or other militia of the state, as he deems necessary, to serve for such term and under the command of such officer as he may direct. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 32 (*Ban. ed.* 198); *took effect immediately.*]

733. *May revoke the proclamation.*

SEC. 733. The governor may, when he thinks proper, revoke the proclamation authorized by the last section, or declare that it shall cease at the time and in the manner directed by him.

TITLE II.

OF JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS BY IMPEACHMENT OR OTHERWISE.

CHAPTER I. OF IMPEACHMENTS 737
II. OF THE REMOVAL OF CIVIL OFFICERS OTHERWISE THAN BY IMPEACHMENT 758

CHAPTER I.

OF IMPEACHMENTS.

737. *Officers liable to impeachment.*

SEC. 737. The governor, lieutenant-governor, secretary of state, controller, treasurer, attorney-general, surveyor-general, chief justice, associate justices of the supreme court, and judges of the superior courts, are liable to impeachment for any misdemeanor in office. [*Amendment, approved February* 18, 1880; *Amendments* 1880, 3 (*Ban. ed.* 7); *took effect immediately.*]

Impeachment.—This section is taken from the first portion of section 18 of article 4 of the state constitution. See note to next section as to form of articles of impeachment, and the rules generally adopted in such proceedings.

738. *Articles, how prepared.*

SEC. 738. All impeachments must be by resolution adopted, originated in, and conducted by managers elected by the assembly, who must prepare articles of impeachment, present them at the bar of the senate, and prosecute the same. The trial must be had before the senate sitting as a court of impeachment.

Impeachment.—This section is also taken from article 4 section 17 of the state constitution. In this respect our constitution is similar to the federal constitution: Const. U. S., art. 1, sec. 3. The method of procedure generally adopted in preparing articles of impeachment in the assembly is shown by the course adopted in the impeachment of G. W. Whitman, controller, and Henry Bates, treasurer, at the eighth session of the California legislature, 1856-7: See journals of assembly of that session, pp. 253, 289, 307, 318. See, as to form of articles of impeachment, Id. 375; Senate Journal, pp. 297, 303; Proceedings on Trial of William Hardy, by Sumner & Cutter, p. 14; Proceedings in the Trial of Andrew Johnson, p. 1. In Bouvier's Law Dictionary, tit. Impeachment, the mode of proceeding in the institution and trial of impeachments in the United States congress is set out at length. As to the rules of procedure adopted by the senate in considering articles of impeachment, see Proceedings on Trial of William Hardy, by Sumner & Cutter, pp. 6-8; Proceedings in the Trial of Andrew Johnson, pp. 6-8. During the trial of the person impeached all his functions as an officer are suspended: Opinion of Judges, 3 Neb. 464. To render articles of impeachment effective, they must be presented to and received by a constitutional majority of the senate: *Matter of Executive Communication*, 12 Fla. 653.

739. *Articles of impeachment.*

SEC. 739. When an officer is impeached by the assembly for a misdemeanor in office, the articles of impeachment must be delivered to the president of the senate.

740. *Time of hearing—Service on defendant.*

SEC. 740. The senate must assign a day for the hearing of the impeachment and inform the assembly thereof. The president of the senate must cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant not less than ten days before the day fixed for the hearing.

741. *Service, how made.*

SEC. 741. The service must be made upon the defendant personally, or if he cannot, upon diligent inquiry, be found within the state, the senate, upon proof of that fact, may order publication to be made, in such manner as it may deem proper, of a notice requiring him to appear at a specified time and place and answer the articles of impeachment.

742. *Proceedings on failure to appear.*

SEC. 742. If the defendant does not appear, the senate, upon proof of service or publication, as provided in the two last sections, may, of its own motion or for cause shown, assign another day for hearing the impeachment, or may proceed, in the absence of the defendant, to trial and judgment.

743. *Defendant, after appearance, may answer or demur.*

SEC. 743. When the defendant appears he may in writing object to the sufficiency of the articles of impeachment, or he may answer the same by an oral plea of not guilty, which plea must be entered upon the journal, and puts in issue every material allegation of the articles of impeachment.

744. *If demurrer is overruled, defendant must answer.*

SEC. 744. If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the senate who heard the argument, the defendant must be ordered forthwith to answer the articles of impeachment. If he then pleads guilty, or refuses to plead, the senate must render judgment of conviction against him. If he plead not guilty, the senate must, at such time as it may appoint, proceed to try the impeachment.

745. *Senate to be sworn.*

SEC. 745. At the time and place appointed, and before the senate proceeds to act on the impeachment, the secretary must administer to the president of the senate, and the president of the senate to each of the members of the senate

then present, an oath truly and impartially to hear, try, and determine the impeachment; and no member of the senate can act or vote upon the impeachment, or upon any question arising thereon, without having taken such oath.

746. *Two thirds necessary to a conviction.*

SEC. 746. The defendant cannot be convicted on impeachment without the concurrence of two thirds of the members elected, voting by ayes and noes, and if two thirds of the members elected do not concur in a conviction, he must be acquitted. [*Amendment, approved February* 18, 1880; *Amendments* 1880, 3 (*Ban. ed.* 7); *took effect immediately.*]

The original section used the word "present" instead of "elected."

747. *Judgment on conviction, how pronounced.*

SEC. 747. After conviction the senate must, at such time as it may appoint, pronounce judgment, in the form of a resolution entered upon the journals of the senate.

748. *When judgment of senate.*

SEC. 748. On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the senate.

749. *Nature of the judgment.*

SEC. 749. The judgment may be that the defendant be suspended, or that he be removed from office and disqualified to hold any office of honor, trust, or profit under the state. [*Amendment, approved February* 18, 1880; *Amendments* 1880, 3 (*Ban. ed.* 8); *took effect immediately.*]

The original section had "and removed from office" after the word "suspended."

750. *Effect of judgment of suspension.*

SEC. 750. If judgment of suspension is given, the defendant, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments of the office.

751. *Officer, when impeached, disqualified until acquitted.*

SEC. 751. Whenever articles of impeachment against any officer subject to impeachment are presented to the senate, such officer is temporarily suspended from his office, and cannot act in his official capacity until he is acquitted. Upon such suspension of any officer other than the governor, his office must at once be temporarily filled by an appointment made by the governor, with the advice and consent of the senate, until the acquittal of the party impeached; or in case of his removal, until the vacancy is filled at the next election as required by law.

752. *Presiding officer when lieutenant-governor impeached.*

SEC. 752. If the lieutenant-governor is impeached, notice of the impeachment must be immediately given to the senate by the assembly, that another president may be chosen.

753. *Impeachment not a bar to indictment.*

SEC. 753. If the offense for which the defendant is convicted on impeachment is also the subject of an indictment or information, the indictment or information is not barred thereby. [*Amendment, approved February* 18, 1880; *Amendments* 1880, 3 (*Ban. ed.* 8); *took effect immediately.*]

This chapter is based on Stats. 1851, 212 et seq.; 1857, 17.

CHAPTER II.

OF THE REMOVAL OF CIVIL OFFICERS OTHERWISE THAN BY IMPEACHMENT.

758. *Accusation to be presented by grand jury.*

SEC. 758. An accusation in writing against any district, county, township, or municipal officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed.

Removal of civil officers otherwise than by impeachment.—Under this section, which is taken from article 4, section 18, of the state constitution, all officers, other than those named in section 737 as liable to impeachment, are liable to be tried for misconduct in office, and if found guilty, removed therefrom. The constitutional provision just referred to reads: "All other civil officers shall be tried for misdemeanor in office in such manner as the legislature may provide." The appointing power has no authority to remove officers the duration of whose term is provided for by law: *People* v. *Jewett*, 6 Cal. 291. If the duration of an office is not fixed, the appointing power may exercise the power of removal at pleasure: *People* v. *Hill*, 7 Id. 97; *People* v. *Squires*, 14 Id. 12; see *People* v. *Mizner*, 7 Id. 519. The legislature may extend the term of an incumbent when an office has been filled by an election: *Christy* v. *Board of Supervisors*, 39 Id. 3. So it may abolish or change an office created by it, and it may extend or abridge the terms of its incumbents at pleasure: *In re Bulger*, 45 Id. 553.

759. *Form of accusation.*

SEC. 759. The accusation must state the offense charged, in ordinary and concise language, and without repetition.

760. *Accusation of impeachment to be transmitted to district attorney, and copy served on defendant.*

SEC. 760. The accusation must be delivered by the foreman of the grand jury to the district attorney of the county, except when he is the officer accused, who must cause a copy thereof to be served upon the defendant, and require, by notice in writing of not less than ten days, that he appear before the superior court of the county, at a time mentioned in the notice, and answer the accusation. The original accusation must then be filed with the clerk of the court. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 32 (*Ban. ed.* 199); *took effect immediately.*]

761. *Proceedings if defendant does not appear.*

SEC. 761. The defendant must appear at the time appointed in the notice and answer the accusation, unless for some sufficient cause the court assign another day for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

762. *Defendant may object to or deny the accusation.*

SEC. 762. The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

763. *Form of objection.*

SEC. 763. If he objects to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection.

764. *Manner of denial.*

SEC. 764. If he denies the truth of the accusation, the denial may be oral and without oath, and must be entered upon the minutes.

765. *If objections overruled, defendant to answer.*

SEC. 765. If an objection to the sufficiency of the accusation is not sustained, the defendant must answer thereto forthwith.

766. *Proceedings upon plea of guilty, refusal to answer, or denial.*

SEC. 766. If the defendant pleads guilty, or refuses to answer the accusation, the court must render judgment of conviction against him. If he denies the matters charged, the court must immediately, or at such time as it may appoint, proceed to try the accusation.

767. *Trial by jury.*

SEC. 767. The trial must be by a jury, and conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

768. *State and defendant entitled to process for witnesses.*

SEC. 768. The district attorney and the defendant are respectively entitled to such process as may be necessary to enforce the attendance of witnesses as upon a trial of an indictment.

769. *Judgment upon conviction, and its form.*

SEC. 769. Upon a conviction the court must, at such time as it may appoint, pronounce judgment that the defendant be removed from office; but, to warrant a removal, the judgment must be entered upon the minutes, and the causes of removal must be assigned therein.

770. *Appeal, how taken.*

SEC. 770. From a judgment of removal an appeal may be taken to the supreme court, in the same manner as from a judgment in a civil action; but until such judgment is reversed, the defendant is suspended from his office. Pending the appeal, the office must be filled as in case of a vacancy.

This chapter is based on Stats. 1851, 212 et seq.; 1863, 158.

771. *Proceedings for removal of district attorney.*

SEC. 771. The same proceedings may be had on like grounds for the removal of a district attorney, except that the accusation must be delivered by the foreman of the grand jury to the clerk, and by him to a judge of the superior court of the county, who must thereupon appoint some one to act as prosecuting officer in the matter, or place the accusation in the hands of the district attorney of an adjoining county, and require him to conduct the proceedings. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 32 (*Ban. ed.* 199); *took effect immediately.*]

772. *Removal of public officers by summary proceedings before superior courts.*

SEC. 772. When an accusation in writing, verified by the oath of any person, is presented to a superior court, alleging that any officer within the jurisdiction of the court has been guilty of charging and collecting illegal fees for services rendered, or to be rendered, in his office, or has refused or neglected to perform the official duties pertaining to his office, the court must cite the party charged to appear before the court at a time not more than ten nor less than five days from the time the accusation was presented, and on that day, or some other subsequent day not more than twenty days from that on which the accusation was presented, must proceed to hear, in a summary manner, the accusation and evidence offered in support of the same, and the answer and evidence offered by the party accused; and if, on such hearing, it appears that the charge is sustained, the court must enter a decree that the party accused be deprived of his

office, and must enter a judgment for five hundred dollars in favor of the informer, and such costs as are allowed in civil cases. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 33 (*Ban. ed.* 199); *took effect immediately.*]

Summary proceedings for removal of public officers.—This section is in substance a re-enactment of an act entitled "An act to prevent extortion in office, and to enforce official duty," approved March 14, 1853, Stats. 1853, 40. Under section 4 of that act it was held that any person was authorized to file the complaint therein mentioned who would take upon himself to institute an inquiry into the conduct of public officers, and that it was not necessary that such party should aver or prove that he was a party in interest in the strict sense, or that he had suffered any special damage by reason of the official neglect complained of. "It is not the personal interest of the complainant which the statute regards, but the higher and more important interest of the people and body politic in the honest and faithful discharge of official duties by public servants. The right of a private person to institute an inquiry into the conduct of office-holders under the act in question may be said to be akin to the right of every elector to contest the claim of any person asserting himself to have been elected to office:" *Matter of Marks*, 45 Cal. 199; see *Minor* v. *Kidder*, 43 Id. 229. The legislature may provide the manner in which all civil officers, other than those liable to impeachment, shall be tried for misdemeanor in office: *Matter of Marks*, 45 Id. 199. Before an officer can be removed from office for charging and receiving illegal fees, the court must find that such fees were knowingly, willfully, or corruptly taken: *Triplett* v. *Munter*, 50 Id. 644. If the charges made against an officer are unsustained, no judgment costs can be rendered against the people or state: *People* v. *Kirkpatrick*, 57 Id. 353.

Crimes, jurisdiction of.—Jurisdiction is the power to hear and determine causes. It is given by the law, and cannot be conferred by consent of the parties: *People* v. *Granice*, 50 Cal. 447. It is original when conferred upon certain officers or tribunals to hear and determine causes in the first instance, and appellate when the power is given to them to review by appeal the decisions of other officers or tribunals. In this state the original jurisdiction of the trial of all criminal cases amounting to a felony, and cases of misdemeanor not otherwise provided for, is vested in the superior court: Const. Cal., art. 6, sec. 5. The supreme court is vested with appellate jurisdiction in all criminal cases prosecuted by indictment or information in a court of record, on questions of law alone: Id., art. 6, sec. 4. By the constitution of 1863 the supreme court was vested with appellate jurisdiction in criminal cases only when they amounted to a felony, and then on questions of law alone: Const. 1863, art. 6, sec. 4; *People* v. *Shear*, 7 Cal. 139; *People* v. *Vick*, Id. 165; *People* v. *Cornell*, 16 Id. 187; *People* v. *War*, 20 Id. 117; *People* v. *Burney*, 29 Id. 459; *People* v. *Johnson*, 30 Id. 98; *People* v. *Apgar*, 35 Id. 389; *People* v. *Jones*, 31 Id. 565; *People* v. *Aubrey*, 53 Id. 427. Under the present constitution appellate jurisdiction is given to the supreme court in all cases of felony, upon questions of law alone, and in all cases of misdemeanors, upon questions of law alone, that are prosecuted by indictment or information in a court of record. State tribunals have no jurisdiction to punish crimes against the laws of the United States: *People* v. *Kelly*, 38 Id. 145. Certain acts, however, may be crimes both by the laws of the United States, and of a particular state; and when this is so, both sovereignties may punish the offense: *Fox* v. *State*, 5 How. 410; *United States* v. *Marigold*, 9 Id. 560; *Moore* v. *Illinois*, 14 Id. 13, 20; *People* v. *White*, 34 Cal. 183; sec. 655. And a punishment of such acts by one of such governmental powers is no bar to a further punishment of the same acts by the other: 1 Bish. Crim. L., sec. 989. Although this is plainly the law, yet a punishment by one of such governments of certain acts which are criminal against both is generally regarded by the other as sufficient ground for ordering a *nolle prosequi*, or granting a pardon to the offender, when it is again attempted to punish him for the commission thereof: Id.; *Commonwealth* v. *Fuller*, 8 Met. 313; *Harlam* v. *People*, 1 Doug. 207, 212; *Houston* v. *Moore*, 5 Wheat. 1; *People* v. *Westchester*, 1 Park. Cr. 659; *Commonwealth* v. *Barry*, 116 Mass. 1; see *Manley* v. *People*, 7 N. Y. 295, 302; *Hendrick* v. *Commonwealth*, 5 Leigh, 707. In this state it is a sufficient defense for a defendant to show that he has been prosecuted and convicted under the laws of another state, government, or country, for the same acts or omission for which he is here being tried: Sec. 656.

Locus delicti.—In all criminal prosecutions the venue must be alleged in the indictment, and proved by the people upon the trial as alleged: *People* v. *Parks*, 44 Cal. 105; *People* v. *O'Neil*, 48 Id. 257; *People* v. *Roach*, Id. 382; *People* v. *Murphy*, 51 Id. 376; *People* v. *Bevans*, 52 Id. 470. Upon appeal the record must show that the *locus delicti* was proved: See cases last cited. It is not necessary, however, that any particular witness should testify in so many words to the venue of the crime as alleged in the indictment; it is sufficient if all the testimony, taken together, leaves no room for a reasonable doubt on this point: *People* v. *Manning*, 48 Id. 335. As to whether evidence of general reputation is admissible to prove the *locus delicti*, see *People* v. *McLane*, 19 Id. 131.

TITLE III.

OF PROCEEDINGS IN CRIMINAL ACTIONS, PROSECUTED BY INDICTMENT, TO THE COMMITMENT, INCLUSIVE.

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CHAPTER I.

OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

777. Jurisdiction of offenses committed in this state.

SEC. 777. Every person is liable to punishment, by the laws of this state, for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States.

Penal laws, operation of.—Penal laws are generally local in their operation, and are only intended to punish such offenses as are committed within the sovereignty in which they are enacted. One sovereignty has no jurisdiction over and will not undertake to punish crimes committed in another. Certain well-settled exceptions exist to this rule, however. Where a criminal act perpetrated in one state or foreign sovereignty by continuity of operation takes effect in another, the courts of the latter have jurisdiction to punish the crime as if all the *res gestæ* had taken place within its territory: May's Crim. L., sec. 41; *Commonwealth* v. *Macloon*, 101 Mass. 1; *Tyler* v. *People*, 8 Mich. 320; 1 Bish. Crim. L., secs. 114 et seq. A man need not be actually present in a country or state to render himself amenable to its laws. If crime is the immediate result of his act, he may be made to answer for it in the courts of the place where it is consummated, though he is not actually present in such place at the time. In contemplation of law he is present. Thus, if a man stand in one state, and by firing a gun kill a man in another, he would be answerable to the laws of the latter, if ever he should come within their jurisdiction: *People* v. *Adams*, 3 Denio, 207; *People* v. *Rathburn*, 21 Wend. 509; *State* v. *Chapin*, 17 Ark. 561; *Adams* v. *People*, 1 N.Y. 173; *United States* v. *Davis*, 2 Sumn. 482. So if a man who resides in one country should by means of an innocent agent commit a crime in another, he is liable to punishment under the laws of the latter when found within the jurisdiction of such laws: May's Crim. L., sec. 41; *Jones* v. *State*, 19 Ind. 421. So if a person residing in one country should send poison by means of a letter to another residing in a different country, for the purpose of poisoning such other, and should succeed, he would be liable to punishment under the laws of the latter country: *People* v. *Rathbun*, 21 Wend. 509; *Regina* v. *Garrett*, 22 Eng. L. & Eq. 607.

Crime committed by person out of state: Sec. 27, note.

Locus delicti: See sec. 1102, note.

778. When offense commenced without but consummated within this state.

SEC. 778. When the commission of a public offense commenced without the state is consummated within its boundaries, the defendant is liable to punishment therefor in this state, though he was out of the state at the time of the commission of the offense charged. If he consummated it in this state through the intervention of an innocent or guilty agent, or any other means proceeding directly from himself, in such case the jurisdiction is in the county in which the offense is consummated.

Extraterritorial crime: See a valuable discussion, by Wharton, of this subject in 6 Crim. Law Mag. 155.

779. When inhabitant of this state concerned in duel out of same, and party wounded dies therein.

SEC. 779. When an inhabitant or resident of this state, by previous appointment or engagement, fights a duel or is concerned as second therein, out of the

jurisdiction of this state, and in the duel a wound is inflicted upon a person, whereof he dies in this state, the jurisdiction of the offense is in the county where the death happens.

780. *When inhabitant leaves state to evade the statute against dueling or challenges to fight.*

SEC. 780. When an inhabitant of this state leaves the same for the purpose of evading the operation of the provisions of the code relating to dueling and challenges to fight, with the intent or for the purpose of doing any of the acts prohibited therein, the jurisdiction is in the county of which the offender was an inhabitant when the offense was committed.

Leaving state to evade laws relating to dueling: See *State* v. *Farrier*, 1 Hawks, 487; *State* v. *Taylor*, 1 Treadw. 107; 3 Brev. 243.

781. *When an offense committed partly in one county and partly in another.*

SEC. 781. When a public offense is committed in part in one county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county.

Offense committed partly in one county and partly in another.—A person who receives property in one county and takes it into another, and there embezzles it, cannot be tried under this section in the former county, unless when he received the property there he had the intent to fraudulently convert it to his own use: *People* v. *Murphy*, 51 Cal. 376; see *People* v. *Wooley*, 44 Id. 494; *State* v. *Hamilton*, 13 Nev. 386.

Indictment.—See as to what indictment should allege when offense is committed partly in one county and partly in another: *People* v. *Ah Ouw*, 39 Cal. 604; *People* v. *Wooley*, 44 Id. 494.

782. *When committed on the boundary, etc., of two or more counties.*

SEC. 782. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

"Five hundred yards thereof:" *People* v. *Wooley*, 44 Cal. 494; *People* v. *Salorse*, 62 Id. 139; *People* v. *Davis*, 36 N. Y. 77. See an application of this section in a trial for larceny, where the boundary between the counties of Los Angeles and Ventura was somewhat indefinite, in *People* v. *Velarde*, 59 Cal. 457.

783. *Jurisdiction of an offense on board a vessel, or on railroad train or car.*

SEC. 783. When an offense is committed in this state on board a vessel navigating a river, bay, slough, lake, or canal, or lying therein, in the prosecution of her voyage, the jurisdiction is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage terminates; and when the offense is committed in this state on a railroad train or car prosecuting its trip, the jurisdiction is in any county through which the train or car passes in the course of her trip, or in the county where the trip terminates. [*Amendment, approved January* 28, 1876; *Amendments* 1875–6, 116; *took effect sixtieth day after passage.*]

784. *Jurisdiction of criminal action.*

SEC. 784. The jurisdiction of a criminal action:

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnaping him, with intent, against his will, to cause him to be secretly confined or imprisoned in this state, or to be sent out of the state, or from one county to another, or to be sold as a slave, or in any way held to service; or,

2. For decoying, taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having the lawful charge of the child; or,

3. For inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of twenty-five years, for the purpose of prostitution; or,

4. For taking away any female under the age of sixteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of concubinage or prostitution;

—Is in the county in which the offense is committed, or out of which the person upon whom the offense was committed may, in the commission of the offense, have been brought, or in which an act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense, or in abetting the parties concerned therein. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 11 (*Ban. ed.* 156); *took effect immediately.*]

Kidnaping: Sec. 207, note.
Enticing away children: Sec. 278.
Enticing away unmarried female: Secs. 266, 267, and notes.

785. *Jurisdiction of indictment for bigamy or incest.*

SEC. 785. When the offense, either of bigamy or incest, is committed in one county and the defendant is apprehended in another, the jurisdiction is in either county.

786. *When property feloniously taken in one county and brought into another.*

SEC. 786. When property taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offense is in either county. But if at any time before the conviction of the defendant in the latter, he is indicted in the former county, the sheriff of the latter county must, upon demand, deliver him to the sheriff of the former.

Property feloniously taken in one county and brought into another: See sec. 27, subd. 2, and note. Goods stolen in one county and sold in another to a person knowing them to be stolen, the courts of the first county have no jurisdiction to punish the offense of the receiver: *People* v. *Stakem*, 40 Cal. 599. So where a person has stolen property in one county and taken it into another, it is proper to charge him with having committed the offense in the latter county; and when the venue is laid in that county, the facts showing the property to have been taken in the other county need not be averred, but evidence showing that the property was so taken may be admitted: *People* v. *Mellon*, 40 Id. 654; *State* v. *Brown*, 8 Nev. 212. In construing this section in *People* v. *Valenzuella*, 6 Pac. C. L. J. 561, it was held that a person cannot be said to commit a new larceny in every county through which he leads or carries stolen property, and that this section, which authorizes a trial in the county to which the property has been brought authorizes such trial when the property "has been taken by larceny" in another county, and contemplates a complete offense in such other county. See also *People* v. *Murphy*, 51 Cal. 376.

Bringing stolen property into the state: See sec. 789.

787. *Jurisdiction of criminal action for escaping from prison.*

SEC. 787. The jurisdiction of a criminal action for escaping from prison is in any county of the state. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 11 (*Ban. ed.* 156); *took effect immediately.*]

The words "criminal action" are here substituted for the word "indictment" in the original.

788. *Jurisdiction of criminal action for treason committed out of state.*

SEC. 788. The jurisdiction of a criminal action for treason, when the overt act is committed out of the state, is in any county of the state. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 11 (*Ban. ed.* 156); *took effect immediately.*]

Similar amendment as in last section.
Penal laws, operation of: Sec. 778, note.
Crime committed by person out of state: Sec. 27, subd. 2, and note.

789. *Jurisdiction of criminal action for stealing, etc., property out of state and bringing it therein.*

SEC. 789. The jurisdiction of a criminal action for stealing in any other state the property of another, or receiving it, knowing it to have been stolen, and

bringing the same into this state, is in any county into or through which such stolen property has been brought. [*Amendment, approved April* 9, 1880· *Amendments* 1880, 11 (*Ban. ed.* 157); *took effect immediately.*]

Similar amendment as in section 787.

Stealing property without and bringing it within the state.—This section settles a much-vexed question, and one upon which the authorities are irreconcilably opposed to each other. In England, at an early date, where goods were seized piratically on the ocean and carried by the thief into that country, the common-law judges refused to entertain jurisdiction of the larceny because "the original act, namely, the taking of them, was not any offense whereof the common law taketh knowledge; and, by consequence, the bringing of them into a county could not make the same felony punishable by our law:" *Butler's Case*, cited 13 Co. 53. This doctrine was subsequently in England applied to goods stolen, both in other parts of the king's dominions and in foreign countries. And it has also been followed by the courts of many of the United States: 1 Bish. Crim. L., sec. 141, and cases there cited. In other states the English rule has not been recognized, but a directly opposite one has been adopted and followed: *Watson* v. *State*, 36 Miss. 593; *State* v. *Cummings*, 33 Conn. 260; *State* v. *Underwood*, 49 Me. 181; *State* v. *Bennett*, 14 Iowa, 479; *State* v. *Newman*, 9 Nev. 48; *Myers* v. *People*, 26 Ill. 173; *State* v. *Johnson*, 2 Or. 115; 1 Bish. Crim. L., sec. 141, and cases there cited. In several states of the Union, statutes similar to section 789 have been adopted, and under which it has invariably been held that a state may punish persons who bring stolen property within its limits, regardless of what the common law may be, and that such statutes are constitutional: *People* v. *Burke*, 11 Wend. 129; *La Vaul* v. *State*, 40 Ala. 44; *McFarland* v. *State*, 4 Kan. 68; *State* v. *Williams*, 35 Mo. 229; *People* v. *Williams*, 24 Mich. 156; see *State* v. *Stimpson*, 45 Me. 608; *Fox* v. *Ohio*, 5 How. 410, 434; see sec. 27, note.

Taking stolen property from one county to another: Sec. 786.

790. *Jurisdiction of criminal action for murder, etc., where injury inflicted in one county and party dies out of that county.*

SEC. 790. The jurisdiction of a criminal action for murder or manslaughter, when the injury which caused the death was inflicted in one county, and the party injured dies in another county or out of the state, is in the county where the injury was inflicted. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 11 (*Ban. ed.* 157); *took effect immediately.*]

Similar amendment as in section 787.

Jurisdiction of an indictment for murder.—This section conforms to the rule adopted in England and some of the United States, that a homicide is committed in the county where the blow is inflicted, though the death takes place elsewhere, and that jurisdiction to punish such offense is in the county where the blow is inflicted: 1 Bish. Crim. L., sec. 113; *Grosvenor* v. *St. Augustine*, 12 East, 244; *State* v. *Carter*, 27 N. J. L. 499; *Riley* v. *State*, 9 Humph. 646; 1 Bish. Crim. Proc., secs. 51, 52; *People* v. *Gill*, 6 Cal. 637; but see *Tyler* v. *People*, 8 Mich. 320; *Commonwealth* v. *Macloon*, 101 Mass. 1.

Venue in assault to murder is where act is committed: See *People* v. *Lock Wing*, 61 Cal. 380.

791. *Of an indictment against accessary.*

SEC. 791. In the case of an accessary in the commission of a public offense, the jurisdiction is in the county where the offense of the accessary was committed, notwithstanding the principal offense was committed in another county.

See *People* v. *Stakem*, 40 Cal. 599.

792. *Jurisdiction in cases of principals who are not present, etc., at commission of principal offense.*

SEC. 792. The jurisdiction of a criminal action against a principal in the commission of a public offense, when such principal is not present at the commission of the principal offense, is in the same county it would be under this code if he were so present and aiding and abetting therein. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 11 (*Ban. ed.* 157); *took effect immediately.*]

Similar amendment as in section 787.

793. *Conviction or acquittal in another state a bar, where jurisdiction concurrent.*

SEC. 793. When an act charged as a public offense is within the jurisdiction of another state or country, as well as of this state, a conviction or acquittal thereof in the former is a bar to the prosecution or indictment therefor in this state,

794. *Conviction or acquittal in another county a bar, where jurisdiction concurrent.*

SEC. 794. When an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment therefor in another.

795. *Jurisdiction on violation of law relating to prize-fights.*

SEC. 795. The jurisdiction of a violation of sections four hundred and twelve, four hundred and thirteen, and four hundred and fourteen of the Penal Code, or a conspiracy to violate either of said sections, is in any county:

1. In which any act is done toward the commission of the offense; or,
2. Into, out of, or through which the offender passed to commit the offense; or,
3. Where the offender is arrested.

[*New section, approved March* 7, 1874; *Amendments* 1873–4, 466; *took effect sixtieth day after passage.*]

CHAPTER II.

OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

799. *Prosecution for murder may be commenced at any time.*

SEC. 799. There is no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

No limitation for prosecutions for murder.—As against the crime of murder there is no limitation, whether it be of the first or second degree: *People* v. *Haun*, 44 Cal. 96.

Interposing statute of limitation by demurrer: See an article by F. F. Heard in 1 Crim. Law Mag. 451, criticising and questioning the doctrine of *United States* v. *Cook*, 17 Wall. 168, that the statute of limitations cannot be taken advantage of by demurrer.

800. *Limitation of three years in all other felonies.*

SEC. 800. An indictment for any other felony than murder must be found or an information filed within three years after its commission. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 12 (*Ban. ed.* 157); *took effect immediately.*]

The amendment introduced the words "or an information filed."

Indictment must show that offense is not barred.—The indictment must show that the offense charged is not barred by lapse of time, and if such offense is one capable of being divided into degrees, the indictment should show that no degree is barred: *People* v. *Miller*, 12 Cal. 291.

801. *Limitation of one year in misdemeanors.*

SEC. 801. An indictment for any misdemeanor must be found or an information filed within one year after its commission. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 12 (*Ban. ed.* 157); *took effect immediately.*]

Similar amendment as in section 800.

Larceny of horse not within this section: *People* v. *Salorse*, 62 Cal. 139; and see *People* v. *Leehey*, 4 Pac. C. L. J. 75.

Assault with deadly weapon with intent to inflict great bodily injury is not within the bar of this section; the offense is a felony: *People* v. *Helbing*, 59 Cal. 567.

802. *Exception when defendant is out of the state.*

SEC. 802. If, when the offense is committed, the defendant is out of the state, the indictment may be found or an information filed within the term herein limited after his coming within the state, and no time during which the defendant is not an inhabitant of or usually resident within this state is part of the limitation. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 12 (*Ban. ed.* 157); *took effect immediately.*]

Similar amendment as in section 800.

"The statute excludes from computation the time the defendant may be out of the state, but the rule is that this exception must be stated in the pleading. *Prima facie* lapse of time is a good defense, and if the statutory exception is relied upon, the state should set it up: *People* v. *Miller*, 12 Cal. 295; *State* v. *Bockwith*, 1 Stew. 318; *Shelton* v. *State*, 1 Stew. & P. 208; 1 Ch. Crim. L. 253; *People* v. *Montejo*, 18 Cal. 38:" Commissioners' note.

803. *Indictment found, when presented and filed.*

SEC. 803. An indictment is found within the meaning of this chapter when it is presented by the grand jury in open court, and there received and filed.

CHAPTER III.

THE INFORMATION.

806. *Complaint defined.*

SEC. 806. The complaint is the allegation in writing made to a court or magistrate that a person has been guilty of some designated offense. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 12 (*Ban. ed.* 157); *took effect immediately.*]

Changes in head-notes.—The legislature of 1880 changed the name of the "allegation in writing," mentioned in this section, from "the information" to "the complaint." No change was made, however, in the head-note to chapter 3 of title 3, of which section 806 is a part. As to the importance of head-notes, see sec. 4, and note, *ante*.

807. *Magistrate defined.*

SEC. 807. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

"The definition of the term 'magistrate,' as used throughout this code, is here given to save unnecessary repetition of the official names of the officers who come within this description:" Commissioners' note.

808. *Who are magistrates.*

SEC. 808. The following persons are magistrates:

1. The justices of the supreme court;
2. The judges of the superior court;
3. Justices of the peace;
4. Police magistrates in towns or cities.

[*Amendment approved March* 12, 1880; *Amendments* 1880, 7 (*Ban. ed.* 27); *took effect immediately.*]

Magistrates.—In *Ex parte Granice*, 51 Cal. 375, decided prior to the amendment of this section, it was held that district judges were magistrates, vested with authority to hold accused persons to answer; also in *Ex parte Walsh*, 39 Id. 705.

809. *Filing information after examination and commitment.*

SEC. 809. When a defendant has been examined and committed, as provided in section eight hundred and seventy-two of this code, it shall be the duty of the district attorney, within thirty days thereafter, to file in the superior court of the county in which the offense is triable an information charging the defendant with such offense. The information shall be in the name of the people of the state of California, and subscribed by the district attorney, and shall be in form like an indictment for the same offense. [*New section, approved April* 9, 1880; *Amendments* 1880, 12 (*Ban. ed.* 157); *took effect immediately.*]

Information, prosecution by.—Section 8 of article 1 of the present constitution of this state provides that "offenses heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law." In pursuance of this provision, the legislature of 1880 enacted section 809, providing for prosecutions by information. In *Kalloch* v. *Superior Court*, 56 Cal. 229, it was urged that to proceed against a person by information instead of by indictment, for a criminal offense, was to

deprive him of his life or liberty without due process of law; and that therefore the provision of the state constitution above quoted was in conflict with section 1, article 14, of the constitution of the United States, and consequently invalid. This objection was regarded by the court as untenable, and it was held "that this proceeding, as it was regulated by the constitution and laws of this state, is not opposed to any of the definitions given of the phrases 'due process of law' and 'the law of the land;' but on the contrary, it is a proceeding strictly within such definition, as much so in every respect as in a proceeding by indictment. It may be questionable whether the proceeding by indictment secures to the accused any superior rights and privileges; but certainly a prosecution by information takes from him no immunity or protection to which he is entitled under the law. But the constitution of this state has made provision for this form of prosecution, and the legislature has furnished the machinery to enforce it. In our opinion, the proceeding is a legal and constitutional one." The validity of such proceeding is also recognized in other states of the Union: *State* v. *Keyes*, 8 Vt. 57; *Commonwealth* v. *Waterborough*, 5 Mass. 257; *Whiting* v. *State*, 14 Conn. 487; *Washburn* v. *People*, 10 Mich. 385; *Rowan* v. *State*, 30 Wis. 129; *State* v. *Welch*, 37 Id. 196. The whole subject is fully examined, and the constitutionality of the California procedure in this regard upheld, in *Hurtado* v. *People*, 110 U. S. 516. Misdemeanors and other offenses not capital nor infamous may be prosecuted by information in the national courts: *United States* v. *Waller*, 1 Saw. 701; *United States* v. *Shepard*, 1 Abb. 431.

But after the repeal of a statute requiring punishment for its violation to be by indictment, an offense committed before the repeal cannot sustain a prosecution by information: *People* v *Tisdale*, 57 Cal. 104.

Before, however, a person can be prosecuted by information, he must have been examined and committed by one of the persons named as magistrates in the preceding section; but it is not necessary to aver in the information that the defendant has been so examined and committed: *People* v. *Shubrick*, 57 Cal. 555. The pendency of one information does not prevent another from being filed for the same offense: *Kalloch* v. *Superior Court*, 56 Id. 229. It is not necessary for the district attorney to state that he informs under his oath of office: *State* v. *Sickle*, Brayt. 132. If verified, it may be upon information and belief: *State* v. *Montgomery*, 8 Kan. 355; *Washburn* v. *People*, 10 Mich. 385; but see *Vannatta* v. *State*, 31 Ind. 210; *Vogel* v. *State*, Id. 64. In Kentucky an information cannot be amended: *Commonwealth* v. *Rodes*, 1 Dana, 595; but in this state the right to amend is impliedly recognized by section 1009, *post*. In other states it may be amended: *State* v. *Stebbins*, 29 Conn. 464; *State* v. *Weare*, 38 N. H. 314. After the examination spoken of in section 809, it is left to the discretion of the district attorney to prosecute either by indictment or information. The provisions of this code equally apply to one as to the other: *People* v. *Carlton*, 57 Cal. 559.

CHAPTER IV.

THE WARRANT OF ARREST.

811. *Examination of prosecutor and witnesses upon information.*

SEC. 811. When an information is laid before a magistrate of the commission of a public offense, triable within the county, he must examine on oath the informant or prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Magistrates defined: See sec. 808. In *Ex parte Granice*, 51 Cal. 375, the supreme court held that a district judge was a magistrate, vested with authority to hold accused persons to answer.

Deposition within the meaning of this section.—The ordinary meaning given to the word "deposition" is evidence given by a witness by question and answer, written down by an official person. The universal practice under the above section is, however, to require no more of the informant or prosecutor than an affidavit or verified complaint, charging the commission of the offense, and that the accused is guilty. It seems that the affidavit will be sufficient if it charge in positive terms, as within the knowledge of the deponent, the commission of the offense, and proceed upon information only as to the person guilty of perpetrating the offense: *People* v. *Smith*, 1 Cal. 9. So in *People* v. *Velarde*, 59 Id. 457, it seems that an affidavit was the foundation of the issuing of the order of arrest, and the court there say, in explaining the object of the statute provision regarding warrants of arrest, that "the regularity of the proceeding by information did not therefore depend, in any manner, upon the affidavit on which the warrant of arrest was issued, and had no connection with it."

Non-compliance with these provisions does not affect the question of jurisdiction: *Murphy* v. *Superior Court*, 58 Cal. 520.

As to examination on commission, see *post*, secs. 1349 et seq.

812. *Deposition, what to contain.*

SEC. 812. The deposition must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offense and the guilt of the defendant.

813. *When warrant may issue.*

SEC. 813. If the magistrate is satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he must issue a warrant of arrest.

814. *Form of warrant.*

SEC. 814. A warrant of arrest is an order in writing, in the name of the people, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

COUNTY OF ——:

The people of the state of California to any sheriff, constable, marshal, or policeman of said state, or of the county of ——:

Information on oath having been this day laid before me, by A B, that the crime of —— (designating it) has been committed, and accusing C D thereof, you are therefore commanded forthwith to arrest the above-named C D and bring him before me at (naming the place), or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at ——, this —— day of ——, eighteen ——.

Objections to the warrant of arrest, or to the affidavit upon which it issued, must be made before the examination of the prisoner has been had, and he has been held to answer by the committing magistrate: *People* v. *Smith*, 1 Cal. 9; see also *People* v. *Brown*, 59 Id. 355.

Accused, before whom to be taken.—The officer making the arrest may take the party before another justice of the peace, of the same county, who may make the examination and commit, in case of the absence or inability to act of the justice issuing the warrant; and it is not essential to this end that the warrant contain such a direction: *Ex parte Branigan*, 19 Cal. 133; see also sec. 824.

815. *Name or description of defendant in warrant, and statement of offense.*

SEC. 815. The warrant must specify the name of the defendant, or, if it is unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city, or town where it is issued, and be signed by the magistrate, with his name of office.

Fictitious names, sufficiency of warrant: See *People* v. *Brown*, 59 Cal. 345.

816. *Warrant to be directed to and executed by peace-officer.*

SEC. 816. The warrant must be directed to and executed by a peace-officer.

817. *Who are peace-officers.*

SEC. 817. A peace-officer is a sheriff of a county, or a constable, marshal, or policeman of a township, city, or town.

818. *To what peace-officers warrants are to be directed.*

SEC. 818. If a warrant is issued by a justice of the supreme court, or judge of a superior court, it may be directed generally to any sheriff, constable, marshal, or policeman in the state, and may be executed by any of those officers to whom it may be delivered. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 33 (*Ban. ed.* 199); *took effect immediately.*]

819. *Same; and when and how executed in another county.*

SEC. 819. If it is issued by any other magistrate, it may be directed generally to any sheriff, constable, marshal, or policeman in the county in which it is issued, and may be executed in that county; or, if the defendant is in another county, it may be executed therein upon the written direction of a magistrate of that county, indorsed upon the warrant, signed by him, with his name of office, and dated at the county, city, or town where it is made, to the following

effect: "This warrant may be executed in the county of ——" (naming the county).

820. *Indorsement on warrant for service in another county, how and upon what proof to be made.*

SEC. 820. The indorsement mentioned in the last section cannot, however, be made unless the warrant of arrest be accompanied with a certificate of the clerk of the county where such warrant was issued, under the seal of the superior court thereof, as to the official character of the magistrate, or, unless upon the oath of a credible witness, in writing, indorsed on or annexed to the warrant, proving the handwriting of the magistrate by whom it was issued. Upon such proof, the magistrate indorsing the warrant is exempted from liability to a civil or criminal action, though it afterwards appear that the warrant was illegally or improperly issued. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 33 (*Ban. ed.* 199); *took effect immediately.*]

821. *Defendant to be taken before magistrate issuing warrant, etc.*

SEC. 821. If the offense charged is a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in section eight hundred and twenty-four.

Bail—Defendant must be taken before magistrate who issued warrant: Sec. 824.

Duty of officer: *Ex parte Branigan*, 19 Cal. 133.

822. *Defendant arrested for misdemeanor in another county to be admitted to bail.*

SEC. 822. If the offense charged is a misdemeanor, and the defendant is arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate in that county, who must admit the defendant to bail, and take bail from him accordingly.

Bail as matter of right: Sec. 1271, note.

Bail—Defendant must be taken before magistrate who issued warrant: Sec. 824, note.

823. *Proceedings on taking bail from defendant in such cases.*

SEC. 823. On taking the bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear.

824. *When bail is not given—When magistrate who issued warrant cannot act.*

SEC. 824. If, on the admission of the defendant to bail, the bail is not forthwith given, the officer must take the defendant before the magistrate who issued the warrant, or, in case of his absence or inability to act, before the nearest or most accessible magistrate in the same county, and must at the same time deliver to the magistrate the warrant, with his return thereon indorsed and subscribed by him.

Bail—Defendant must be taken before magistrate who issued warrant.—In *Ex parte Hung Sin*, 54 Cal. 102, the prisoner was arrested in San Francisco on a warrant issued by a magistrate of Sacramento county, on a charge of grand larceny. Application by writ of *habeas corpus* was made to the supreme court by the prisoner to be admitted to bail. *Held*, that the charge being a felony, in order to procure bail the prisoner should be taken before the magistrate by whom the warrant was issued, or some other magistrate. See also sec. 814, note.

825. *No delay in taking defendant before magistrate.*

SEC. 825. The defendant must in all cases be taken before the magistrate without unnecessary delay, and any attorney at law entitled to practice in courts

of record of California may, at the request of the prisoner after such arrest, visit the person so arrested. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 30 (*Ban. ed.* 186); *took effect from passage.*]

The amendment added all after "delay."
Reasonable time allowed defendant to obtain counsel: Sec. 859, note.

826. *Proceedings where defendant taken before another magistrate.*

SEC. 826. If the defendant is brought before a magistrate other than the one who issued the warrant, the depositions on which the warrant was granted must be sent to that magistrate, or, if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

827. *Proceedings for offenses triable in another county.*

SEC. 827. When an information is laid before a magistrate of the commission of a public offense triable in another county of the state, but showing that the defendant is in the county where the information is laid, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the depositions of the informant or prosecutor, and of the witnesses who may have been produced, must be delivered by the magistrate to the officer to whom the warrant is delivered.

828. *Duty of officer.*

SEC. 828. The officer who executes the warrant must take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, and must deliver to him the depositions and the warrant, with his return indorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself.

829. *Admission to bail.*

SEC. 829. If the offense charged in the warrant issued pursuant to section eight hundred and twenty-seven is a misdemeanor, the officer must, upon being required by the defendant, take him before a magistrate of the county in which the warrant was issued, who must admit the defendant to bail, and immediately transmit the warrant, depositions, and undertaking, to the clerk of the court in which the defendant is required to appear.

CHAPTER V.

ARREST, BY WHOM AND HOW MADE.

834. *Arrest defined—By whom made.*

SEC. 834. An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace-officer or by a private person.

Arrest.—In a note to *Hawkins* v. *Commonwealth*, 61 Am. Dec. 151–164, will be found a valuable discussion of the subject of arrest, how and by whom to be made, and rights and duties of the parties thereto. Mere spoken words do not constitute an arrest; there must be something by way of physical restraint: 1 Bish. Crim. Proc., sec. 157. It is sufficient, however, if the party making the arrest touch or lay his hands upon the other, although he may not succeed in stopping or holding him: *Genner* v. *Sparks*, 6 Mod. 173; *Whithead* v. *Keyes*, 3 Allen, 495. So if a person submits upon being informed by the officer of the purpose to arrest him, nothing more is required: *Emery* v. *Chesley*, 18 N. H. 198; *Mowry* v. *Chase*, 100 Mass. 79; *Bissell* v. *Gold*, 19 Am. Dec. 487. If the person making the arrest have the present ability to take the prisoner, and the latter goes with him, not voluntarily, but yielding to a superior force, it is an arrest: Id.

Wrongful arrest, who liable for: *Bissel* v. *Gold*, 19 Am. Dec. 490.

Arrest on both civil and criminal process. An officer, armed with process for the arrest

of a person in a civil action, cannot take the person from the hands of another officer who holds him on a warrant issued in a criminal case; in such cases the interest of the private suitor must yield to the paramount interest of the people: *Ex parte Rosenblat*, 51 Cal. 285.

835. *How an arrest is made, and what restraint allowed.*

SEC. 835. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention.

Homicide committed in making arrest: Sec. 196, note.

Arrest, how made.—In those cases in which an arrest is not submitted to, there must be an actual physical caption or manual touching of the body. The party must be deprived of his liberty, or there must be some restraint thereof. Words are not sufficient: *Genner* v. *Sparkes*, 1 Salk. 79; *Russen* v. *Lucas*, 1 Car. & P. 153. If, however, the party submits to the arrest, and is within the power of the officer or other person effecting the arrest, it is sufficient, without any actual taking or touching the person: *Bissel* v. *Gold*, 19 Am. Dec. 487; *Brushaber* v. *Segemann*, 22 Mich. 266. See note to preceding section.

Resisting arrest.—It is the duty of every man to submit to a lawful arrest, and a resistance is a felony. A person making an arrest, however, should only use such force as may be necessary; but, if obliged to, he may take the life of the person that he is attempting to arrest, and such homicide is justifiable: 1 Bish. Crim. Proc., secs. 159, 160; *Lander* v. *Miles*, 3 Or. 35; *Morton* v. *Bradley*, 30 Ala. 683; *Mesmer* v. *Commonwealth*, 26 Gratt. 977. This rule alike applies in arrests for felonies or misdemeanors: 1 Bish. Crim. Proc., sec. 160; but see *Tiner* v. *State*, 44 Tex. 128; *Conraddy* v. *People*, 5 Park. Cr. 234. If the officer has no authority to make the arrest, or having the authority, is not known to be an officer, and does not in some way notify the party that he is an officer, and has authority, the party arrested may lawfully resist the arrest, as if it were made by a private person: *State* v. *Bryant*, 65 N. C. 329; *State* v. *Belk*, 76 Id. 14; 1 East P. C. 309, 312, 314. See article upon this subject in 20 Alb. L. J. 215.

Fleeing from arrest.—There is a very broad distinction between forcible opposition to an arrest and attempting to flee from it. In cases of misdemeanor there is no rule of law that takes away from a man who flees from an attempted arrest the right to defend his life. An officer in such cases is not justified in shooting at a person whom he is attempting to arrest, because he will not stop: *Brady* v. *Price*, 19 Tex. 285; *Tiner* v. *State*, 44 Id. 130; *Middleton* v. *Holmes*, 3 Port. 15. But in cases of a felony, the officer may call upon him to stop, and if he refuses, the officer is justified in shooting at him to compel him to stop: *Mesmer* v. *Commonwealth*, 26 Gratt. 976; *Brooks* v. *Commonwealth*, 61 Pa. St. 352; 1 Bish. Crim. Proc., sec. 159.

Unlawful arrest.—A person, the arrest of whom is attempted to be made unlawfully, may resist such arrest, but not to the taking of life: *State* v. *Belk*, 76 N. C. 10; 1 Bish. Crim. Proc., sec. 162. "He may stand his ground and repel force by force, taking care that the force employed does not exceed the bounds of mere defense and prevention, and that it does not become enormously disproportionate to the injury threatened:" Horr. & Thomp. on Self-defense, 713. So a person who has been unlawfully arrested is justified in escaping if he can, using no more force than is necessary to accomplish this object: *State* v. *Leach*, 7 Conn. 452.

836. *Arrests by peace-officers.*

SEC. 836. A peace-officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person:

1. For a public offense committed or attempted in his presence;

2. When a person arrested has committed a felony, although not in his presence;

3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it;

4. On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested;

5. At night, when there is reasonable cause to believe that he has committed a felony.

Offense in presence of officer.—It is the duty of an officer to arrest all persons committing, or attempting to commit, any crime within his presence: *McCullough* v. *Commonwealth*, 67 Pa. St. 30; *Commonwealth* v. *Deacon*, 8 Serg. & R. 47; *In re Powers*, 25 Vt. 261; *Wolf* v. *State*, 19 Ohio St. 248; *Shanley* v. *Wells*, 71 Ill. 78. The arrest should be made promptly, and if the offenders are not arrested at the time, they cannot be, after the transaction is over, without a warrant: *Roberts* v. *State*, 1 Mo. 138; *Regina* v. *Walker*, 6 Cox C. C. 371. Within a reasonable time is sufficient: *Taylor* v. *Strong*, 3 Wend. 384; see *People* v. *Pool*, 27 Cal. 572.

Charge made upon reasonable cause, etc.—An officer or private person, having reasonable cause to suspect a particular person

guilty of a public offense, may, acting in good faith, arrest him without a warrant: *Reuck* v. *McGregor*, 32 N. J. L. 70; *Burns* v. *Erben*, 40 N. Y. 463. The offense, however, must amount to a felony, for neither one, acting without a warrant, has the right to arrest a person for a misdemeanor committed on an occasion already passed: 1 Bish. Crim. Proc., secs. 167, 181; *Shanley* v. *Wells*, 71 Ill. 78; *Commonwealth* v. *Carey*, 12 Cush. 246; *Commonwealth* v. *McLaughlin*, Id. 615; *Commonwealth* v. *O'Connor*, 7 Allen, 583; unless it be for such a dangerous assault as may end in a felony: *Coupey* v. *Henley*, 2 Esp. 540; *Shanley* v. *Wells*, 71 Ill. 78. What is a reasonable cause for suspicion is a question of law; but it is for the jury to determine the fact whether or not it exists in the circumstances of a particular case: 1 Bish. Crim. Proc., sec. 182; *Davis* v. *Russell*, 2 Moo. & P. 590. An officer who arrests a person, after the governor has, pursuant to law, issued a proclamation that a felony has been committed, acts upon reasonable cause: *Eanes* v. *State*, 6 Humph. 53; see *Commonwealth* v. *Presby*, 14 Gray, 65; *Lawrence* v. *Hedger*, 3 Taunt. 14.

Refusing to arrest: Sec. 142.

Warrant, by whom executed: Sec. 816.

Peace-officers: Sec. 817.

Arrest under warrant, duty of officer: Sec. 848.

Arrest without warrant, duty of officer: Sec. 849.

837. *Arrests by private persons.*

SEC. 837. A private person may arrest another:

1. For a public offense committed or attempted in his presence;

2. When the person arrested has committed a felony, although not in his presence;

3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Subd. 1. Private persons—Arresting for offense committed in their presence.—It is incumbent upon a private citizen, the same as upon an officer, to arrest another for the commission of a crime in his presence. The arrest must be made promptly, and cannot be made, if for a misdemeanor, after the affair is over: 1 Bish. Crim. Proc., sec. 167. A neglect to arrest a person who is committing a felony in the presence of another is highly criminal, and renders the latter liable to punishment: Id., sec. 166. So a person who sees another attempting to commit a felony, although such attempt is only a misdemeanor, may arrest him: *Reuck* v. *McGregor*, 32 N. J. L. 70; *Rex* v. *Hunt*, 1 Moo. 93; *Handcock* v. *Baker*, 2 Bos. & Pul. 260.

Subd. 3. Reasonable cause.—As before stated, it is the duty of a private person, having reasonable cause to suspect a person guilty of a felony, to arrest him, although he has no warrant authorizing him so to do: Sec. 836, note; *Holley* v. *Mix*, 3 Wend. 350; *Long* v. *State*, 12 Ga. 293; *Doering* v. *State*, 49 Ind. 56. The chief distinction between the power of an officer and of a private person to arrest a person for the commission of a felony that is past is, should the arrested one be found not guilty, that the private person will not be justified unless a felony has been actually committed by some one, while the officer is justified though no offense has been committed; yet both must have had reasonable cause to suspect the one apprehended: *Burns* v. *Erben*, 40 N. Y. 463; *Eanes* v. *State*, 6 Humph. 53; *Commonwealth* v. *Presby*, 14 Gray, 65; *Lewis* v. *State*, 3 Head, 127, 146; 1 Bish. Crim. Proc., sec. 181. If a felony has been in fact committed, and a private person has reasonable cause to suspect a particular person, he may, acting in good faith, arrest him without incurring any liability, civil or criminal, should the suspicion prove unfounded: Id., sec. 168; *Ledwith* v. *Catchpole*, Cald. 291; *Brockway* v. *Crawford*, 3 Jones L. 433; *Wakely* v. *Hart*, 6 Binn. 316. Authorities expressing a different view are found, but they are contrary to the general current of authority: *Rohan* v. *Sawin*, 5 Cush. 281; *Commonwealth* v. *Carey*, 12 Id. 246, 251; *Kindred* v. *Stitt*, 51 Ill. 401. As to what is reasonable cause, see section 836, note.

Duty of private citizens to aid in the capture and arrest of a felon: *People* v. *Raten*, 63 Cal. 421.

838. *Magistrates may order arrest.*

SEC. 838. A magistrate may orally order a peace-officer or private person to arrest any one committing or attempting to commit a public offense in the presence of such magistrate.

Arrest by verbal order.—Where a felony or other breach of peace is committed in the presence of a magistrate, he may, as well by verbal order as by warrant, command the arrest of the offender: 1 Bish. Crim. Proc., sec. 178; *Commonwealth* v. *McGahey*, 11 Gray, 194.

Magistrates, who are: Sec. 808.

839. *Persons making arrest may summon assistance.*

SEC. 839. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

Private persons assisting officer in arrest.—An officer who deems it necessary in making an arrest may call upon a by-stander for help, or command the aid of all persons in his precinct, whether acting with or without a warrant: 1 Bish. Crim. Proc., sec. 185; *State* v. *Shaw*, 3 Ired. L. 20; *Coyles* v. *Hurtin*, 10 Johns. 85; *Mitchell* v. *State*, 12 Ark. 50. A refusal to

assist is punishable if the officer is proceeding by lawful authority: *State* v. *Shaw, supra;* or if he is not, his command will be a justification to one who, knowing his official character, comes in good faith to his assistance: *McMahan* v. *Green*, 34 Vt. 69; *Reed* v. *Rice*, 2 J. J. Marsh. 44; see *Dietrichs* v. *Shaw*, 43 Ind. 175.

840. *When the arrest may be made.*

SEC. 840. If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate, indorsed upon the warrant.

841. *Arrest, how made.*

SEC. 841. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or is pursued immediately after its commission, or after an escape.

Immediate pursuit.—In *People* v. *Pool*, 27 Cal. 572, it was said that if, after committing a felony, the guilty parties flee and soon after are pursued by officers and overtaken at a distance of ten or twelve miles from the place where the crime was committed, this is immediate or fresh pursuit, and that notice of the official character of the person attempting to make the arrest, or of the cause of the arrest, is unnecessary.

Disclosure of purpose to arrest.—An officer or a private person seeking to arrest another should make known his purpose: *Brooks* v. *Commonwealth*, 61 Pa. St. 352; *State* v. *Bryant*, 65 N. C. 327; *People* v. *Pool*, 27 Cal. 576. The circumstances of each particular case may render this purpose plain; and if they do, resistance to the arrest will be illegal: 1 Bish. Crim. Proc., sec. 158. Thus if one is wearing the accustomed badge of office, this is sufficient to give notice to the arrested party: *Yates* v. *People*, 32 N. Y. 509; *Commonwealth* v. *Tobin*, 108 Mass. 426. Where a party is apprehended in the commission of an offense, or upon fresh pursuit afterward, notice of the official character of the person making the arrest, or the cause of the arrest, is unnecessary, because he must know the reason why he is apprehended: *People* v. *Pool*, 27 Cal. 576.

842. *Warrant must be shown, when.*

SEC. 842. If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required.

Must show warrant.—A person need not take for granted that a person who says that he has a warrant against him speaks the truth. The party arrested has a right to see the warrant, if the arrest is made by virtue of one: *Hall* v. *Roche*, 8 T. R. 187; *State* v. *Freeman*, 8 Iowa, 428; *Plasters* v. *State*, 1 Tex. App. 673; *State* v. *Phinney*, 42 Me. 384; *Drennan* v. *People*, 10 Mich. 169. Where the officer is known, the party arrested is not entitled to a perusal of the warrant until he has acknowledged the officer's authority, and his power acquiesced in: *Commonwealth* v. *Cooley*, 6 Gray, 350, 356, 357. See *State* v. *Townsend*, 5 Harr. (Del.) 487; *Arnold* v. *Steeves*, 10 Wend. 514.

843. *What force may be used.*

SEC. 843. When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

The officer may take the life of a person if the arrest cannot be accomplished without resort to such violent means: Sec. 196, note. He is also justified, when it appears necessary, in making an assault upon any one interfering to prevent the arrest or to assist the party from being arrested: *Doering* v. *State*, 49 Ind. 56.

844. *Doors and windows may be broken, when.*

SEC. 844. To make an arrest, a private person, if the offense be a felony, and in all cases a peace-officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired. [*Amendment, approved March* 30, 1874; *Amendments* 1873-4, 435; *took effect July* 1, 1874.]

Officer, in making arrest, may break open doors and windows: See 1 Russell on Crimes, 839; *Commonwealth* v. *Tobin*, 108 Mass. 426; *Commonwealth* v. *Reynolds*, 120 Id. 190.

Entering house to make arrest.—Admittance must first be demanded and refused before an officer is justified in breaking into a house in which the person to be arrested is, or is believed to be: 1 Bish. Crim. Proc., sec. 201; *Launock* v. *Brown*, 2 Barn. & Ald. 592; *Commonwealth* v. *McGahey*, 11 Gray, 194.

845. *Same.*

SEC. 845. Any person who has lawfully entered a house for the purpose of making an arrest may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

846. *Weapons may be taken from persons arrested.*

SEC. 846. Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.

847. *Duty of a private person who has made an arrest.*

SEC. 847. A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him to a peace-officer.

848. *Duty of officer arresting with warrant.*

SEC. 848. An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law.

Warrant of arrest, form of: SEC. 814.

849. *Person arrested without a warrant to be taken before a magistrate—Information to be filed.*

SEC. 849. When an arrest is made without a warrant by a peace-officer or private person, the person arrested must, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and an information, stating the charge against the person, must be laid before such magistrate.

850. *Arrest by telegraph.*

SEC. 850. A justice of the supreme court, or a judge of a superior court, may, by an indorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, and thereafter a telegraphic copy of such warrant may be sent by telegraph to one or more peace-officers, and such copy is as effectual in the hands of any officer, and he must proceed in the same manner under it, as though he held an original warrant issued by the magistrate making the indorsement. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 33 (*Ban. ed.* 200); *took effect immediately.*]

851. *Same.*

SEC. 851. Every officer causing telegraphic copies of warrants to be sent must certify as correct, and file in the telegraph office from which such copies are sent, a copy of the warrant and indorsement thereon, and must return the original, with a statement of his action thereunder.

CHAPTER VI.

RETAKING AFTER AN ESCAPE OR RESCUE.

854. *May be at any time or in any place in the state.*

SEC. 854. If a person arrested escape or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him at any time and in any place within the state.

Rescues: Sec. 101, note. **Escapes:** Sec. 105, note. **Assisting escapes:** Sec. 109.

855. *May break open door or window if admittance refused.*

SEC. 855. To retake the person escaping or rescued, the person pursuing may break open an outer or inner door or window of a dwelling-house, if, after notice of his intention, he is refused admittance.

CHAPTER VII.

EXAMINATION OF THE CASE, AND DISCHARGE OF THE DEFENDANT, OR HOLDING HIM TO ANSWER.

858. *Magistrate to inform defendant of charge, and his right to counsel.*

SEC. 858. When the defendant is brought before the magistrate upon an arrest either with or without warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings.

Waiver of examination.—It is held that the provisions of the Penal Code do not authorize a defendant to waive the preliminary examination provided for in this chapter: *Kalloch* v. *Superior Court*, 56 Cal. 229; *Ex parte Walsh*, 39 Id. 705. The charge mentioned in this section and the indictment mentioned in section 917 are not the same thing: *Ex parte Ryan*, 44 Id. 557.

859. *Time to send and sending for counsel.*

SEC. 859. He must also allow the defendant a reasonable time to send for counsel, and postpone the examination for that purpose, and must, upon the request of the defendant, require a peace-officer to take a message to any counsel in the township or city the defendant may name. The officer must, without delay and without fee, perform that duty.

Defendant's right to counsel.—The right to have the assistance of counsel is a constitutional one. Art. 1, sec. 13; see sec. 825.

860. *Examination, when to proceed.*

SEC. 860. If the defendant requires the aid of counsel, the magistrate must, immediately after the appearance of counsel, or if, after waiting a reasonable time therefor, none appears, proceed to examine the case.

861. *When to be completed—Postponement.*

SEC. 861. The examination must be completed at one session, unless the magistrate, for good cause shown by affidavit, postpone it. The postponement cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

Examination must be brought on within six days.—A person who is arrested, charged with the commission of a crime in another state with a view to his being surrendered on a requisition from the governor of that state, is entitled to his discharge if his examination is not brought on before a magistrate within six days: *Ex parte Rosenblat*, 51 Cal. 287.

862. *On postponement, defendant to be committed or discharged on bail.*

SEC. 862. If a postponement is had, the magistrate must commit the defendant for examination, admit him to bail or discharge him from custody upon

the deposit of money as provided in this code, as security for his appearance at the time to which the examination is postponed.

863. *Form of commitment.*

SEC. 863. The commitment for examination is made by an indorsement, signed by the magistrate on the warrant of arrest, to the following effect: "The within-named A B, having been brought before me under this warrant, is committed for examination to the sheriff of ——." If the sheriff is not present, the defendant may be committed to the custody of a peace-officer.

864. *Depositions to be read on examination and subpœnas issued.*

SEC. 864. At the examination, the magistrate must first read to the defendant the depositions of the witnesses examined on taking the information. He must also issue subpœnas, subscribed by him, for witnesses within the state, required either by the prosecution or the defense.

865. *Examination of witnesses to be in presence of defendant, etc.*

SEC. 865. The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf.

866. *Examination of defendant's witnesses.*

SEC. 866. When the examination of witnesses on the part of the people is closed, any witnesses the defendant may produce must be sworn and examined.

Defendant may be a witness.—The accused may become a witness for or against himself at a preliminary examination; and if it appear that his testimony was voluntary and free from undue influence, it may be used against him on the trial for the offense: *People* v. *Kelley*, 47 Cal. 125.

867. *Exclusion and separation of witnesses.*

SEC. 867. While a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

Exclusion and separation of witnesses.—The exclusion of witnesses in a criminal action is not a matter of absolute right, but rests in the discretion of the trial court: *People* v. *Garnett*, 29 Cal. 622. The wife and daughters of the defendant, if witnesses, may be excluded from the court-room: *People* v. *Sprague*, 53 Id. 491. The circumstance that a witness remained in the court-room and heard the evidence of other witnesses, in disobedience to an order of the court excluding him from the court-room while other witnesses were under examination, is no ground for rejecting his testimony. He may be punished for contempt, but a party cannot, without fault on his own part, be deprived, for such disobedience, of the testimony of the witness: *People* v. *Boscovitch*, 20 Id. 436; sec. 1102, last paragraph in note.

868. *Who may be present at the examination.*

SEC. 868. The magistrate must also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney-general, the district attorney of the county, the defendant and his counsel, and the officer having the defendant in custody.

869. *Authentication of deposition in cases of homicide.*

SEC. 869. The testimony of each witness in cases of homicide must be reduced to writing, as a deposition, by the magistrate or under his direction, and in other cases upon the demand of the prosecuting attorney, or the defendant, or his counsel. The magistrate before whom the examination is had may, in his discretion, order the testimony and proceedings to be taken down in short-hand in all examinations herein mentioned, and for that purpose he may appoint a short-hand reporter. The deposition or testimony of the witness must be authenticated in the following form:

1. It must state the name of the witness, his place of residence, and his business or profession;

2. It must contain the questions put to the witness and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth, except in cases where the testimony is taken down in short-hand, the answer or answers of the witness need not be read to him;

3. If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated;

4. The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing, as he gives it, except in cases where the deposition is taken down in short-hand, it need not be signed by the witness;

5. It must be signed and certified by the magistrate when reduced to writing by him, or under his direction, and when taken down in short-hand, the transcript of the reporter appointed as aforesaid, when written out in long-hand writing, and certified as being a correct statement of such testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings. The reporter shall, within ten days after the close of such examination, if the defendant be held to answer the charge, transcribe into long-hand writing his said short-hand notes, and certify and file the same with the county clerk of the county or city and county in which the defendant was examined, and shall, in all cases, file his original notes with said clerk;

6. The reporter's compensation shall be fixed by the magistrate before whom the examination is had, and shall not exceed that now allowed reporters in the superior courts of this state, and shall be paid out of the treasury of the county or the city and county in which the examination is had, on the certificate and order of the said magistrate. [*Amendment, approved March*, 14, 1885; *Statutes and Amendments* 1885, 131; *took effect from and after its passage; repealed conflicting acts.*]

Testimony of witnesses to be reduced to writing, otherwise proceedings are invalid: *Kalloch* v. *Superior Court*, 56 Cal. 229. See presumption drawn in favor of judge doing his duty: *People* v. *Smith*, 59 Id. 365.

Demand necessary in other cases than homicide to necessitate testimony to be reduced to writing: *People* v. *Smith*, 59 Cal. 365.

Deposition not the best evidence.—The deposition taken in pursuance of this section is not the best or only evidence of what a witness may have sworn to. Oral evidence is admissible to show what was sworn upon the examination, notwithstanding the evidence may have been reduced to writing: *People* v. *Curtis*, 50 Cal. 95.

Reporters' fees.—Section 2 of the act of March 3, 1881, amending section 869, was treated by the supreme court, in *Fox* v. *Lindley*, 57 Cal. 650, as a part of the latter section, but it was held inoperative, because there was no law prescribing the fees that reporters were entitled to charge for their services rendered under section 869.

Deposition as evidence.—In *People* v. *Morine*, 54 Cal. 575, it was said that before the deposition of a witness, taken at the preliminary examination, could be read in evidence against defendant at the trial, it must appear that the provisions of the above section had been strictly complied with. A question was also made whether such deposition could be made use of at all against the defendant—whether section 686 is constitutional—but the court did not find it necessary to decide it. Such deposition is not the best or only evidence of what was sworn to before the committing magistrate. The prosecution may, on the trial of the defendant, prove by parol what was sworn to before such magistrate: *People* v. *Curtis*, 50 Id. 95.

"Taking the testimony of a witness on behalf of the people in a criminal case by deposition is an exception to the rule which entitles the defendant in a criminal action to be confronted with the witnesses against him, in the presence of the court; and every substantial requirement of the law which authorizes it must be observed. Any real departure from the course prescribed for the taking of the deposition renders the deposition itself objectionable: *People* v. *Morine*, 54 Cal. 575; *Williams* v. *Chadbourne*, 6 Id. 559; *People* v. *Chung Ah Chue*, 57 Id. 567:" *People* v. *Mitchell*, 64 Id. 85. Here the fact that the witness was unable to procure sureties for his appearance at the trial was tno

shown by the oath of any one, nor did the deposition show that it had been read over to the witness, and that he signed it after acknowledging it to be correct; nor was it certified by the officer before whom it was taken. It was therefore inadmissible.

870. *Deposition, by whom and how kept.*

SEC. 870. The magistrate or his clerk must keep the depositions taken on the information or on the examination until they are returned to the proper court; and must not permit them to be examined or copied by any person except a judge of a court having jurisdiction of the offense or authorized to issue writs of habeas corpus, the attorney-general, district attorney, or other prosecuting attorney, and the defendant and his counsel.

"One of the objects of this section is to keep the evidence from publication when the examination has been secret, and thus to prevent, to as great an extent as possible, the formation of a public opinion that will render the selection of a jury matter of difficulty:" Commissioners' note.

871. *Defendant, when and how discharged.*

SEC. 871. If, after hearing the proofs, it appears either that no public offense has been committed, or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate must order the defendant to be discharged, by an indorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within-named A B guilty of the offense within mentioned, I order him to be discharged."

Order of discharge.—The statute contemplates that the order of discharge shall be reduced to writing: *Ex parte Branigan*, 19 Cal. 137.

872. *When and how to be committed for public offense.*

SEC. 872. If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate must make or indorse on the deposition an order, signed by him, to the following effect: It appearing to me that the offense in the within depositions mentioned (or any offense according to the facts, stating generally the nature thereof) has been committed, and that there is sufficient cause to believe the within-named A B guilty thereof, I order that he be held to answer to the same, and committed to the sheriff of the county of ——. [*Amendment, approved April* 15, 1880; *Amendments* 1880, 37 (*Ban. ed.* 210); *took effect immediately.*]

Commitment.—The statute contemplates that it shall be in writing: *Ex parte Branigan*, 19 Cal. 137; *Kalloch* v. *Superior Court*, 56 Id. 229. The omission to state the name of the person alleged to have been murdered in a commitment holding a person to answer upon a charge of murder renders it defective, but not so as to entitle the accused to his discharge on *habeas corpus: Ex parte Bull*, 42 Id. 196. The questions whether an order holding the accused to answer is erroneous, or was irregularly entered, cannot be considered on an application for the discharge of the accused on *habeas corpus: Ex parte McCullough*, 35 Id. 100; *Ex parte Bull*, 42 Id. 196; *Ex parte Granice*, 51 Id. 375. If an order of commitment is sufficient in substance, it will be held good on *habeas corpus: People* v. *Smith*, 1 Id. 9; see *Ex parte Cahill*, 52 Id. 463, and sec. 858, note.

Where there is no deposition the indorsement here required may be made upon the complaint: *People* v. *Smith*, 59 Cal. 365; *People* v. *Young*, 64 Id. 212. And the indorsement upon the depositions taken on the examination, and not upon the depositions accompanying the information, is sufficient: *People* v. *Hardisson*, 61 Id. 378.

873. *Order for commitment.*

SEC. 873. If the offense is not bailable, the following words must be added to the indorsement: "And he is hereby committed to the sheriff of the county of ——."

Offense bailable: See sec. 1284, note; *People* v. *Geiger*, 49 Cal. 651.

874. *Certificate of bail being taken.*

Section 874, relating to a certificate of bail being taken, was repealed by act of April 15, 1880; Amendments 1880, 37 (Ban. ed. 211); took effect immediately.

875. *Order for bail on commitment.*

SEC. 875. If the offense is bailable, and the defendant is admitted to bail, the following words must be added to the order: "and that he be admitted to bail in the sum of —— dollars, and is committed to the sheriff of the county of —— until he gives such bail. [*Amendment, approved April* 15, 1880; *Amendments* 1880, 37 (*Ban. ed.* 211); *took effect immediately.*]

Bail generally: See secs. 1268 et seq.

876. *Commitment, how made and to whom delivered.*

SEC. 876. If the magistrate order the defendant to be committed, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer is not present, to a peace-officer, who must deliver the defendant into the proper custody, together with the commitment.

Form of commitment: Sec. 877, note.

The order of commitment should state with reasonable certainty the nature, time, and place of the offense: *Ex parte Bull*, 42 Cal. 196; *Ex parte Branigan*, 19 Id. 133.

877. *Form of commitment.*

SEC. 877. The commitment must be to the following effect:

COUNTY OF —— (as the case may be).

The people of the state of California to the sheriff of the county of ——:

An order having been this day made by me, that A B be held to answer upon a charge of (stating briefly the nature of the offense, and giving as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody, and detain him until he is legally discharged.

Dated this —— day of ——, eighteen ——.

878. *Undertaking of witnesses to appear, when and how taken.*

SEC. 878. On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people a written undertaking, to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of five hundred dollars.

Undertaking to appear can be exacted from those witnesses only who were examined before the magistrate: *Ex parte Shaw*, 61 Cal. 58.

879. *Security for the appearance of witnesses, when and how required.*

SEC. 879. When the magistrate or a judge of the court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper, for his appearance as specified in the preceding section.

880. *Infants and married women may be required to give security.*

SEC. 880. Infants and married women, who are material witnesses as against the defendant, may be required to procure sureties for their appearance, as provided in the last section.

881. *Witnesses to be committed on refusal to give security for their appearance.*

SEC. 881. If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate must commit him to prison until he complies or is legally discharged.

882. *Witness unable to give security may be conditionally examined.*

SEC. 882. When, however, it satisfactorily appears by examination, on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people. Such examination must be by question and answer, in the presence of the defendant, or after notice to him, if on bail, and conducted in the same manner as the examination before a committing magistrate is required by this code to be conducted, and the witness thereupon be discharged; but this section does not apply to an accomplice in the commission of the offense charged. [*Amendment, approved March* 14, 1878; *Amendments* 1877-8, 122; *took effect from passage.*]

Constitutional provision.—The constitution provides that "the legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend at the trial:" Sec. 13, art. 1.

Deposition of witness in a criminal case.—When a witness for the people in a criminal case is required to enter into an undertaking with sureties, to appear and testify, and is committed for failure to comply, and it appears that he is unable to procure sureties, he may be discharged and his deposition may be forthwith taken on behalf of the people: *People* v. *Lee*, 49 Cal. 37.

Strict compliance with this section is necessary to render admissible against the accused a deposition taken under it: *People* v *Mitchell*, 64 Cal. 85.

883. *Magistrate to return depositions, etc., to the court.*

SEC. 883. When a magistrate has discharged a defendant, or has held him to answer, he must return, without delay, to the clerk of the court at which the defendant is required to appear, the warrant, if any, the depositions, and all undertakings of bail, or for the appearance of witnesses, taken by him.

TITLE IV.

OF PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT.

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CHAPTER I.

PRELIMINARY PROVISIONS.

888. *What prosecutions must be by indictment.*

SEC. 888. All public offenses triable in the superior courts must be prosecuted by indictment or information, except as provided in the next section. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 12 (*Ban. ed.* 157); *took effect immediately.*]

Indictment for misdemeanor.—Nothing in the constitution of this state, or in this code, prohibits a prosecution by indictment of any criminal offense, including a misdemeanor: *Ex parte McCarthy*, 53 Cal. 412.

Homicides committed before the new constitution went into effect may be prosecuted by information: See *People* v. *Campbell*, 59 Cal. 243. Compare this case with *People* v. *Tisdale*, 57 Id. 104; *People* v. *Carlton*, Id. 559.

889. *What by accusation or information.*

SEC. 889. When the proceedings are had for the removal of district, county, municipal, or township officers, they may be commenced by an accusation or information, in writing, as provided in sections seven hundred and fifty-eight and seven hundred and seventy-two.

890. *Indictments, informations, and accusations, in what court found.*

SEC. 890. All accusations, informations, or indictments against district, county, municipal, and township officers must be found or filed in the superior court. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 34 (*Ban. ed.* 200); *took effect immediately.*]

CHAPTER II.

FORMATION OF THE GRAND JURY.

894. *Who may challenge the panel or an individual juror.*

SEC. 894. The people, or a person held to answer a charge for a public offense, may challenge the panel of a grand jury, or an individual juror.

Challenge to the panel: Sec. 895, note.
Challenge to individual grand juror: Sec. 896, note.

895. *Cause of challenge to a panel.*

SEC. 895. A challenge to the panel may be interposed for one or more of the following causes only:

1. That the requisite number of ballots was not drawn from the jury-box of the county;

2. That notice of the drawing of the grand jury was not given;

3. That the drawing was not had in the presence of the officers designated by law.

Challenge to panel.—The grounds enumerated in this section are the only ones upon which a challenge to the panel of the grand jury can be made. The designation of these grounds, *ex industria*, excludes all others: *People* v. *Southwell*, 46 Cal. 141; *People* v. *Colby*, 54 Id. 37; *People* v. *Hunter*, Id. 65. A challenge to the panel must be interposed before the grand jury is made up and sworn, provided the defendant has, prior to that time, been held to answer: *People* v. *Freeland*, 6 Id. 96; *People* v. *Roberts*, Id. 214; *People* v. *Beatty*, 14 Id. 566; *People* v. *Moice*, 15 Id. 329; *People* v. *Arnold*, Id. 476; *People* v. *Colmere*, 23 Id. 631; *People* v. *Henderson*, 28 Id. 465. So a person who is under arrest at the time the grand jury is impaneled, although he may not have been held to answer, must, if an opportunity is given to him, exercise his right of challenge at that time or he will be precluded from so doing after he is indicted: *People* v. *Geiger*, 49 Id. 643. An indictment found against a person who is refused the privilege of challenging the grand jury is invalid and worthless; but to have this effect, the prisoner must have applied for leave or requested permission to appear and challenge the jury: *People* v. *Romero*, 18 Id. 89, 94. A defendant who has not been held to answer before the grand jury is made up and sworn may challenge the panel on his arraignment: *People* v. *Beatty*, 14 Id. 566. He may also, on motion, have the indictment found against him set aside if it appears that at the time the grand jury was impaneled he had a good ground of challenge to the panel, or to an individual grand juror: Sec. 995; *People* v. *Colmere*, 23 Id. 631; *People* v. *Turner*, 39 Id. 370. It is no objection to the panel of the grand jury that it was summoned by special order of the court: *People* v. *Cuintano*, 15 Id. 327. Unless the contrary appear, it will be presumed that certain persons who had been drawn as grand jurors and excused by the court were legally excused: *People* v. *Millsaps*, 35 Id. 47.

896. *Challenge to grand juror.*

SEC. 896. A challenge to an individual grand juror may be interposed for one or more of the following causes only:

1. That he is a minor;

2. That he is an alien;

3. That he is insane;

4. That he is a prosecutor upon a charge against the defendant;

5. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such;

6. That a state of mind exists on his part in reference to the case, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury founded upon public rumor, statements in public journals, or common notoriety, provided it satisfactorily appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 436; *took effect July* 1, 1874.]

Challenge to individual grand juror.—A challenge to any particular individual sitting as a member of the grand jury must, the same as a challenge to the panel, be interposed before the grand jury is sworn, provided that prior to that time the defendant has been held to answer: *People* v. *Moice*, 15 Cal. 329; *People* v. *Hidden*, 32 Id. 445. But if he has not been so held, he may, by motion to set aside the indictment, take advantage of any ground of challenge that he may have had to an individual grand juror at the time the grand jury was impaneled.

Challenge to the panel: Sec. 895, note.

Setting aside indictment or information: Sec. 995, and notes.

Subd. 6. Partiality.—Challenges properly denied: See *People* v. *Gray*, 61 Cal. 164.

The code examiners say of the amendment, which was adopted at their suggestion: "This section is amended so as to omit as a ground of challenge the fact the juror has formed or expressed an unqualified opinion. Under the sixth subdivision the parties can inquire as to the opinions formed or expressed by the juror, and if they are such as to convince the judge that the juror is not impartial the challenge should be allowed. A provision has also been added, to the effect that opinions formed from public rumor or newspapers shall not disqualify. The other changes proposed consist chiefly in doing away with the 'triers,' and in making the ruling of the court upon the qualifications of grand jurors final."

897. *Manner of taking and trying challenge.*

SEC. 897. The challenges mentioned in the last three sections may be oral or in writing, and must be tried by the court. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 436; *took effect July* 1, 1874.]

898. *Decision upon challenges.*

SEC. 898. The court must allow or disallow the challenge, and the clerk must enter its decisions upon the minutes.

899. *Effect of allowing a challenge to a panel.*

SEC. 899. If a challenge to the panel is allowed, the grand jury are prohibited from inquiring into the charge against the defendant, by whom the challenge was interposed. If, notwithstanding, they do so, and find an indictment against him, the court must direct it to be set aside.

900. *Effect of allowing challenge to an individual juror.*

SEC. 900. If a challenge to an individual grand juror is allowed, he cannot be present or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon. The grand jury must inform the court of a violation of this section, and it is punishable by the court as a contempt.

Grand juror to whom challenge has been allowed—Effect of being in court when indictment is presented.—An indictment is not vitiated because one of the grand jurors who has been challenged and excluded from the deliberations of the case appears in court with the other jurors when the indictment is presented: *People* v. *Gatewood*, 20 Cal. 146.

901. *Objections can only be taken by challenge.*

SEC. 901. A person held to answer to a charge for a public offense can take advantage of any objection to the panel or to an individual grand juror in no other mode than by challenge.

This section applies only to cases where the defendant is held to answer before the impaneling of the jury: *People* v. *Beatty*, 14 Cal. 571.

902. *Appointment of a foreman.*

SEC. 902. From the persons summoned to serve as grand jurors and appearing, the court must appoint a foreman. The court must also appoint a foreman when the person already appointed is excused or discharged before the grand jury is dismissed.

Order appointing foreman.—Order appointing need not be entered in the minutes if the indictment is indorsed by the foreman and returned to the court: *People* v. *Roberts*, 6 Cal. 214.

903. *Oath of foreman.*

SEC. 903. The following oath must be administered to the foreman of the grand jury: "You, as foreman of the grand jury, will diligently inquire into, and true presentment make, of all public offenses against the people of this state, committed or triable within this county, of which you shall have or can obtain legal evidence. You will keep your own counsel and that of your fellows and of the government, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You will present no person through malice, hatred, or ill-will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God." [*Amendment, approved March* 30, 1874; *Amendments* 1873-4, 437; *took effect July* 1, 1874.]

How juror voted he cannot be compelled to disclose: *Ex parte Sontag*, 1 West Coast Rep. 583; S. C., 64 Cal. 525.

904. *Oath of other grand jurors.*

SEC. 904. The following oath must be immediately thereupon administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part, so help you God."

905. *Charge of the court.*

SEC. 905. The grand jury, being impaneled and sworn, must be charged by the court. In doing so, the court must give them such information as it may deem proper, or as is required by law, as to their duties, and as to any charges for public offenses returned to the court or likely to come before the grand jury.

906. *Retirement of the grand jury—Discharge of.*

SEC. 906. The grand jury must then retire to a private room and inquire into the offenses cognizable by them. On the completion of the business before them, they must be discharged by the court; but whether the business is completed or not, they are discharged by the final adjournment of the court.

907. *Special grand jury.*

SEC. 907. If an offense is committed during the sitting of the court, after the discharge of the grand jury, the court may, in its discretion, direct an order to be entered that the sheriff summon another grand jury.

Special grand jury.—If there is more than one person in custody awaiting the action of the grand jury, and out of the grand jurors summoned the first thirteen are impaneled as a grand jury for the term, and three of these have formed an opinion as to the guilt of one of the persons in custody, and are challenged by him for that reason, the court may direct the jury to pass on all the cases except that of the challenger, and summon a special grand

jury to pass on his case: *People* v. *Manahan*, 32 Cal. 68; see also *People* v. *McDonnell*, 47 Id. 134; *People* v. *Colby*, 54 Id. 40. After the commencement of the session of the court, if it shall appear proper to the judge that a grand jury should be summoned, he may cause an order to be entered to that effect: *People* v. *Long*, 43 Id. 444.

908. *Order for special grand jury.*

SEC. 908. The order must require the sheriff to summon sixteen persons, qualified to serve as grand jurors, to appear at a time specified, and a copy thereof, under the seal of the court, must, by the clerk, be delivered to the sheriff.

909. *Order, how executed.*

SEC. 909. The sheriff must execute the order and return it, with a list of names of the persons summoned.

910. *Special grand jury, how formed.*

SEC. 910. At the time appointed the list must be called over, and the names of those in attendance be written by the clerk on separate ballots and put into a box, from which a grand jury must be drawn.

CHAPTER III.

POWERS AND DUTIES OF A GRAND JURY.

915. *Powers of a grand jury.*

SEC. 915. The grand jury must inquire into all public offenses committed or triable within the county, and present them to the court, either by presentment or by indictment.

Grand jury, powers of.—The grand jury should inquire into all offenses committed within the county not barred by the statute of limitations: *People* v. *Beatty*, 14 Cal. 566. Grand jurors may act on their personal knowledge to find an indictment without further testimony: 1 Bish. Crim. Proc., sec. 864; *Regina* v. *Russell*, Car. & M. 247; Proffat on Jury Trials, sec. 51. In most instances the prosecuting officer lays before the grand jury their business: *Lewis* v. *Wake Co.*, 74 N. C. 194. In some of the states a mere private person may present a case to them and ask an investigation: 1 Bish. Crim. Proc., sec. 863; but see *McCullough* v. *Commonwealth*, 67 Pa. St. 30. This is not universally so, and the better rule seems to be as laid down in Pennsylvania. "They can act only upon and present offense of public notoriety, and such as are within their own knowledge, such as are given to them in charge by the court, and such as are sent up to them by the district attorney, and in no other cases can they indict without a previous prosecution before a magistrate:" *McCullough* v. *Commonwealth*, 67 Pa. St. 30, 33, *per* Agnew, J. If a witness swears falsely before them they may, of their own motion and knowledge, indict him for the perjury: *State* v. *Terry*, 30 Mo. 368. A grand jury constitutes a part of the court by which it is convened, and is under its control: *State* v. *Cowan*, 1 Head, 280. It cannot dissolve itself: *Clem* v. *State*, 33 Ind. 418, 424. The court has power to recall a grand jury to pass upon offenses committed after they have been discharged, and before the adjournment of the term: *State* v. *Reid*, 20 Iowa, 414. So if dismissed to a future day, on which they fail to reassemble, they may come together on a subsequent day and lawfully transact business: *Clem* v. *State*, 33 Ind. 418. So where the grand jury had come into court and had been discharged and had left the court, but had neither left the building nor separated, an order directing them to be sent back into court and to consider another bill of indictment is valid: *Regina* v. *Holloway*, 9 Car. & P. 43. An indictment may be legally found without the accused being present or notice being given to him: *State* v. *Wolcott*, 21 Conn. 272.

Impaneling grand juries: Const. Cal., art. 1, sec. 8; Code Civ. Proc., secs. 241-243, *post*.

916. *Presentment defined.*

SEC. 916. A presentment is an informal statement in writing, by the grand jury, representing to the court that a public offense has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual named or described therein has committed it.

Presentment.—Mr. Proffatt, in his work on jury trials, thus states the difference between a presentment and an indictment: "The original foundation of the institution of a grand jury contemplated it as an inquisitorial body, who would, of their own motion, by their own knowledge, bring offenders to trial whom no one dared publicly to accuse. They were,

therefore, empowered to present accusations themselves against culprits known to them; and the same is still the case. When the grand jury acts in this manner, it is said to make a presentment; when it finds a case specially committed to it by a prosecution, it is said to find an indictment. However, in modern times the former power of presenting an offender on their own knowledge is very much questioned, and in practice, at the present time, the grand jury merely act upon such matters as are officially laid before them by the public prosecutor:" Sec. 51. Mr. Bishop considers the distinction between a presentment and the American indictment as "very thin:" 1 Bish. Crim. Proc., sec. 136.

917. *Indictment defined.*

SEC. 917. An indictment is an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offense.

Indictment must contain what: Sec. 950, and notes.
Indictment, sufficiency of: Sec. 959, and notes.

918. *Foreman may administer oaths.*

SEC. 918. The foreman may administer an oath to any witness appearing before the grand jury.

919. *Evidence receivable before the grand jury.*

SEC. 919. In the investigation of a charge for the purpose of either presentment or indictment, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of a witness in the cases mentioned in the third subdivision of section six hundred and eighty-six. The grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.

Deposition of witness, when taken before a magistrate upon a criminal charge, may be used before the grand jury: *People* v. *Stuart*, 4 Cal. 218. A defendant may voluntarily testify before a grand jury: *People* v. *King*, 28 Id. 266.

Legal evidence: *People* v. *Tinder*, 19 Cal. 542.

920. *Grand jury not bound to hear evidence for defendant, but may order explanatory evidence, etc.*

SEC. 920. The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

Defendant may voluntarily testify before a grand jury: *People* v. *King*, 28 Cal. 266.

What evidence grand jury should receive.—The rule of the present day as to what evidence should be received by a grand jury in its deliberations is thus stated by Field, J.: "You will receive all the evidence presented which may throw light upon the matter under consideration, whether it tend to establish the innocence or the guilt of the accused; and, more, if in the course of your inquiries you have reason to believe that there is other evidence, not presented to you, within your reach, which would qualify or explain away the charge under investigation, it would be your duty to order such evidence to be produced. Formerly, it was held that an indictment might be found if evidence were produced sufficient to render the truth of the charge probable. But a different and a more just and merciful rule now prevails. To justify the finding of an indictment, you must be convinced, so far as the evidence before you goes, that the accused is guilty; in other words, you ought not to find an indictment unless, in your judgment, the evidence before you, unexplained and uncontradicted, would warrant a conviction by a petit jury:" Charge to the grand jury, 2 Saw. 667, 670.

921. *Degree of evidence to warrant indictment.*

SEC. 921. The grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury.

Grand jury, duty of.—Grand jury should not find an indictment when the evidence, taken together, if unexplained or uncontradicted, would not warrant a conviction before a trial jury: *People* v. *Tinder*, 19 Cal. 543. In finding an indictment, it is not the duty of the grand jury to determine the degree of the crime: *People* v. *King*, 27 Id. 507; *People* v. *Nichol*, 34 Id. 211.

922. *Grand jurors must declare their knowledge as to commission of public offense.*

SEC. 922. If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow-jurors, who must thereupon investigate the same.

923. *Must inquire into cases of persons imprisoned, etc.*

SEC. 923. The grand jury must inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted; into the condition and management of the public prisons within the county; and into the willful and corrupt misconduct in office of public officers of every description within the county.

Grand jury must inquire into cases of all persons under arrest.—It is the duty of the grand jury to inquire into cases of persons under arrest, although they may not have been held to answer as provided in section 872: *People* v. *Geiger*, 49 Cal. 651.

924. *Entitled to access to public prison, etc.*

SEC. 924. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.

925. *When and from whom they may ask advice, and who may be present during their sessions.*

SEC. 925. The grand jury may, at all reasonable times, ask the advice of the court, or the judge thereof, or of the district attorney; but unless such advice is asked, the judge of the court must not be present during the sessions of the grand jury. The district attorney of the county may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever they or he thinks it necessary; but no other person is permitted to be present during the sessions of the grand jury except the members and witnesses actually under examination, and no person must be permitted to be present during the expression of their opinions or giving their votes upon any matter before them.

Persons present other than grand jurors and witnesses.—At the present day, the grand jury, although considered a part of the court, generally sits by itself while receiving testimony: *State* v. *Branch*, 68 N. C. 186; *Grand Jury* v. *Public Press*, 4 Brew. 313. The fact, however, that a third person is present, under no suspicious circumstances, has been held not sufficient to vitiate an indictment found: *State* v. *Kimball*, 29 Iowa, 267; *State* v. *Clough*, 49 Me. 573; *Little* v. *Commonwealth*, 25 Gratt. 921, 931, 932. Their deliberations, however, while voting on finding a bill should be private, but the effect of the presence of a third person at that time is not settled by the authorities: *State* v. *Kimball*, 29 Iowa, 267; *Shattuck* v. *State*, 11 Ind. 473; *State* v. *Fasset*, 16 Conn. 457. The better practice is to exclude everybody but members from the room at such time: *Shattuck* v. *State*, 11 Ind. 473. And this is required by this section. The defendant may be present and cross-examine witnesses: *Lung's Case*, 1 Conn. 428; *State* v. *Fasset*, 16 Id. 457.

An Act in relation to interpreters before grand juries.

[Approved March 23, 1872; 1871-2, 540.]

Interpreter before grand jury.

SECTION 1. The grand jury or district attorney may require, by subpœna, the attendance of any person before the grand jury as interpreter; and the interpreter may be present at the examination of witnesses before the grand jury.

SEC. 2. This act shall be in force from and after its passage.

Witness may be interpreter: *People* v. *Ramirez*, 56 Cal. 533.

926. *Secrets of grand jury to be kept, except, etc.*

SEC. 926. Every member of the grand jury must keep secret whatever he himself or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them; but may, however,

be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against such person for perjury in giving his testimony or upon trial therefor.

Obligation of secrecy.—The obligation of secrecy is imposed on grand jurors, for the public benefit, and not for the benefit of persons that may appear before them as witnesses; and such witnesses cannot take advantage of this obligation in a criminal prosecution against them: *People* v. *Young*, 31 Cal. 563. Different reasons are given why this obligation of secrecy is imposed. The principal one is that of public policy. So, in order to secure freedom of deliberation and opinion among grand jurors, and to prevent a person from attempting to escape against whom proceedings are being taken, and also to prevent the testimony produced before the grand jury from being contradicted at the trial of the indictment, by subornation of perjury on the part of the accused, the law requires such proceedings to be secret: 1 Greenl. Ev., sec. 252; *Little's Case*, 25 Gratt. 930. Where, however, the purposes of secrecy are accomplished, the better opinion is that the doings of a grand jury may be revealed if justice demands it: 1 Bish. Crim. Proc., sec. 857; *Commonwealth* v. *Mead*, 12 Gray, 167, 170; *State* v. *Broughton*, 7 Ired. L. 96; *State* v. *Brewer*, 8 Mo. 373. The testimony may come from a grand juror himself: *State* v. *Wood*, 53 N. H. 484; *United States* v. *Charles*, 2 Cranch C. C. 76; *Crocker* v. *State*, Meigs, 127; *Commonwealth* v. *Hill*, 11 Cush. 137; or from a third person present: *Regina* v. *Hughes*, 1 Car. & Kir. 519; *Little* v. *Commonwealth*, 25 Gratt. 921, 931. So a person who was a witness before the grand jury may be questioned as to what was his own evidence: *Regina* v. *Gibson*, Car. & M. 672.

That a grand juror cannot be compelled to disclose how he voted, see *Ex parte Sontag*, 64 Cal. 525.

927. *Grand juror not to be questioned for his conduct, except, etc.*

SEC. 927. A grand juror cannot be questioned for anything he may say or any vote he may give in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow-jurors.

Grand jurors not responsible in civil damages.—In *Turpen* v. *Booth*, 56 Cal. 65, 69, this section was held to mean that grand jurors are not liable for damages in a civil action for anything done by them in the grand-jury room, although actuated by malice. "They [grand jurors] have certain duties to perform under the law, of a *quasi* judicial character; and in the performance of such duties the law invests them with judgment and discretion. The grand jury was an essential part of the machinery of the county court. They were not volunteers, but were engaged in the performance of a duty that was compulsory. In finding the indictment complained of, they acted within the legitimate sphere of their duty, and cannot be held civilly responsible. . . . . To hold grand jurors liable for damages in civil actions would be against the policy of the law, and we find no authority in the adjudged cases for so holding:" See *Hunter* v. *Mathis*, 40 Ind. 356.

928. *Duties of grand jury as to examining official books, records, and accounts.*

SEC. 928. It shall be the duty of the grand jury annually to make a careful and complete examination of the books, records, and accounts of all the officers of the county, and especially those pertaining to the revenue, and report thereon, and if, in their judgment, the services of an expert are necessary, they shall have power to employ one at an agreed compensation not to exceed five dollars per day, payable as other county charges. The judge, upon the impanelment of such grand jury, shall charge them specially as to their duties under this section. [*New section, approved April* 16, 1880; *Amendments* 1880, 43 (*Ban. ed.* 380); *took effect immediately.*]

CHAPTER IV.

PRESENTMENT, AND PROCEEDINGS THEREON.

931. *Presentment must be by twelve grand jurors, etc.*

SEC. 931. A presentment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be signed by the foreman.

932. *Must be presented to the court and filed.*

SEC. 932. The presentment, when found, must be presented by the foreman, in presence of the grand jury, to the court, and must be filed with the clerk.

933. *If facts stated in presentment constitute public offense, court must direct bench-warrant.*

SEC. 933. If the facts stated in the presentment constitute a public offense, triable in the county, the court must direct the clerk to issue a bench-warrant for the arrest of the defendant.

934. *Bench-warrant, by whom and how issued.*

SEC. 934. The clerk, on the application of the judge or district attorney, may, accordingly, at any time after the order, whether the court be sitting or not, issue a bench-warrant, under his signature and the seal of the court, into one or more counties.

935. *Form of bench-warrant.*

SEC. 935. The bench-warrant, upon presentment, must be substantially in the following form: County of ——. The people of the state of California to any sheriff, constable, marshal, or policeman in this state: A presentment having been made on the —— day of ——, eighteen ——, to the superior court of the county of ——, charging C D with the crime of —— (designating it generally), you are therefore commanded forthwith to arrest the above-named C D, and to take him before E F, a magistrate of this county; or in case of his absence or inability to act, before the nearest and most accessible magistrate in this county. Given under my hand, with the seal of said court affixed, this —— day of ——, A. D. eighteen ——. By order of the court. [Seal.] G H, Clerk. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 34 (*Ban. ed.* 200); *took effect immediately.*]

936. *Bench-warrant, how served.*

SEC. 936. The bench-warrant may be served in any county, and the officer serving it must proceed thereon as upon a warrant of arrest on an information, except that when served in another county it need not be indorsed by a magistrate of that county.

937. *Proceedings of magistrate on defendant being brought before him.*

SEC. 937. The magistrate, when the defendant is brought before him, must proceed upon the charges contained in the presentment, in the same manner as upon a warrant of arrest on an information.

TITLE V.

OF THE INDICTMENT.

CHAPTER I. FINDING AND PRESENTMENT OF THE INDICTMENT..... 940
II. RULES OF PLEADING AND FORM OF THE INDICTMENT..... 948

CHAPTER I.

FINDING AND PRESENTMENT OF THE INDICTMENT.

940. *Indictment must be found by twelve jurors, indorsed, etc.*

SEC. 940. An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be indorsed, "A true bill," and the indorsement must be signed by the foreman of the grand jury.

Grand jurors—Number present to find indictment.—Although it is absolutely necessary, in order to put a defendant on trial, that an indictment should be concurred in by at least twelve grand jurors, it is equally as well settled in this state that the whole number re-

quired by law to form a grand jury need not be present at the finding of an indictment. It is sufficient if twelve concur in the finding, although less than the statutory number composing the grand jury were present at the time. In *People* v. *Roberts*, 6 Cal. 214, under the act of 1856, which provided that "if, of the persons summoned, not less than seventeen nor more than twenty-three attend, they shall constitute the grand jury," it was held that all the seventeen need not be present at the finding of an indictment, if twelve concurred in the finding. So in *People* v. *Butler*, 8 Id. 440, it was said: "If twelve concur in finding an indictment, it is not perceived how a prisoner can be injured by the absence of the others who were impaneled." *People* v. *Gatewood*, 20 Id. 147, and *People* v. *Hunter*, 54 Id. 65, are to the same effect. In *People* v. *Thurston*, 5 Id. 69, an indictment found by twenty-four persons, when the statute limited the number to twenty-three, was held worthless, and all proceedings based upon it were declared void: See also *People* v. *Gray*, 61 Id. 164. "There is no evidence that it [the indictment] was not found by the constitutional number, twelve."

"A true bill."—Every indictment should be certified to be a true bill by an indorsement thereon in those words, signed by the foreman. An indictment not so certified is invalid, and will be set aside on motion: Sec. 995; *People* v. *Lawrence*, 21 Cal. 368; *People* v. *Johnston*, 48 Id. 549. After plea, however, this objection is waived, such indorsement being held, in this state, not essential to the legality and sufficiency of the indictment: *People* v. *Lawrence*, *supra*. In other states a failure to comply with this requirement is held fatal, even after verdict: *Webster's Case*, 5 Me. 432; *Nomaque* v. *People*, Breese, 145; *Commonwealth* v. *Walters*, 6 Dana, 290. In New Hampshire a different rule prevails, and such indorsement is not necessary: *State* v. *Freeman*, 13 N. H. 488; also in Massachusetts: *Commonwealth* v. *Smyth*, 11 Cush. 473. Where the indorsement was "true bill," instead of "a true bill," it was held sufficient: *State* v. *Elkins*, Meigs, 109; *State* v. *Davidson*, 12 Vt. 300. So where there was no indorsement on the indictment, but those words were written on a paper in which the indictment was folded, it was held sufficient: *Burgess* v. *Commonwealth*, 2 Va. Cas. 483.

Foreman must sign.—In many of the states an indictment, to be valid, must be signed by the foreman of the grand jury: *Commonwealth* v. *Sargent*, Thach. Crim. Cas. 116; *State* v. *Davidson*, 12 Vt. 300; *State* v. *Squire*, 10 N. H. 558; *Gardiner* v. *People*, 3 Scam. 83. It is a sufficient signing if the foreman, in affixing his signature, makes use of only the initials of his christian name: *State* v. *Taggart*, 38 Me. 298. So where an indictment was signed "A. B.," the foreman, and the letters "F. G. J." were added, they were held sufficient to indicate that he acted as foreman, it appearing from the record that A. B. was in fact foreman of the grand jury when the bill was found: *State* v. *Chandler*, 2 Hawks, 439. In North and South Carolina, Missouri, and Georgia, the foreman need not sign an indictment: *State* v. *Creighton*, 1 Nott & M. 256; *State* v. *Cox*, 6 Ired. L. 440; *State* v. *Mertens*, 14 Mo. 94; *McGuffie* v. *State*, 17 Ga. 497.

941. *If not found, depositions, etc., must be returned to court, etc.*

SEC. 941. If twelve grand jurors do not concur in finding an indictment against a defendant who has been held to answer, the depositions and statement, if any, transmitted to them must be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

How indorsed.—This section provides how an indictment shall be indorsed: *People* v. *Colby*, 54 Cal. 38.

Setting aside indictment because not indorsed, etc.: Sec. 995, note.

942. *Effect of dismissal.*

SEC. 942. The dismissal of the charge does not prevent its resubmission to a grand jury as often as the court may direct. But without such direction it cannot be resubmitted.

Resubmission of charge.—A defendant who has been held to answer upon a criminal charge, and who is not indicted by the grand jury at the term of court next after his committment, is entitled to be discharged, unless good cause be shown for his further detention. A mere recommendation by the grand jury that his case be submitted to the next, is not sufficient cause for his detention: *Ex parte Bull*, 42 Cal. 196; *Ex parte Clarke*, 54 Id. 412. His discharge by the court, however, does not prevent him from being again arrested and examined for the same offense: *Ex parte Cahill*, 52 Id. 463. Such dismissal is in the nature of a judgment of nonsuit, and as the defendant in such case has never been put in jeopardy, within the meaning of the constitution, he may be again prosecuted for the same offense: *Ex parte Clarke*, 54 Id. 412. An order of resubmission is not an appealable order: *People* v. *Clarke*, 42 Id. 622.

943. *Names of witnesses inserted at foot of indictment.*

SEC. 943. When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before

them, must be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court.

Indorsement of names of witnesses on indictment.—Unless the names of the witnesses examined before the grand jury are indorsed on or inserted at the foot of the indictment it will be set aside on motion: Sec. 995, note. This objection must be taken before the defendant pleads, or it is waived: Sec. 996; *People* v. *Freeland*, 6 Cal. 96; *People* v. *Symonds*, 22 Id. 348; *People* v. *Lopez*, 26 Id. 112; *People* v. *King*, 28 Id. 266. A person may be sworn and examined as a witness on the trial although his name is not indorsed on the indictment, and although he may have been a witness before the grand jury: *People* v. *Freeland*, 6 Id. 96; *People* v. *Lopez*, 26 Id. 112; *People* v. *Symonds*, 22 Id. 348. So a person who was not examined before the grand jury, and whose name is not indorsed on the indictment, may be a witness for the prosecution on the trial: *People* v. *Jocelyn*, 29 Id. 562. The name indorsed was F. Diefenbach, while the witness was G. Diefenbach; this was held insufficient to warrant the denying a motion to set aside the indictment: *People* v. *Crowey*, 56 Id. 36.

944. *Indictment, how presented and filed.*

SEC. 944. An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk.

Presented to court.—It will be presumed that an indictment was presented to the court by the foreman of the grand jury, and in their presence, although that fact is not indorsed upon it, unless the contrary appear from the record of the court: *People* v. *Blackwell*, 27 Cal. 65. The conclusion of the grand jury is evidenced by the presentation to the court of an indictment, or by a return of the papers from the committing magistrate, if any have been delivered to them, with an indorsement that the charge is dismissed: *People* v. *Lawrence*, 21 Id. 373. If no papers from the committing magistrate have been in their hands, their judgment upon the complaint is indicated by the fact that no indictment is returned: Id. If an indictment is not presented in the manner prescribed in this code, it may be set aside on motion: *People* v. *Southwell*, 46 Id. 148. The manner of presenting an indictment to the court is prescribed by this section: *People* v. *Colby*, 54 Id. 38.

945. *Proceedings when defendant not in custody.*

SEC. 945. When an indictment is found against a defendant not in custody, the same proceedings must be had as are prescribed in sections nine hundred and seventy-nine to nine hundred and eighty-four, inclusive, against a defendant who fails to appear for arraignment.

Defendant not in custody.—Courts have no jurisdiction over persons charged with crime, unless in custody, actual or constructive. It would be a farce to proceed in a criminal cause unless the court had control over the person charged, so that its judgment might be made effective. An indictment may, however, be found against one not in custody, but unless an arrest is effective, the cause can proceed no further: *People* v. *Redinger*, 55 Cal. 298.

CHAPTER II.

RULES OF PLEADING AND FORM OF THE INDICTMENT.

948. *Form of and rules of pleading.*

SEC. 948. All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this code.

Rules of criminal pleadings.—The established rule of the common law, that penal statutes should receive a strict construction in favor of him upon whom a penalty was to be inflicted, has been abrogated by this code: See sec. 4, note; *Ex parte Gutierrez*, 45 Cal. 429. The above rule is applicable as well to sections merely regulating matters of practice as to those which define what constitutes an offense: See sec. 1404, note. In *People* v. *Clarke*, 7 Pac. C. L. J. 177, it was held that an information which was inartificially drawn, but which stated the substance of the offense, was good. In *People* v. *King*, 27 Cal. 507, it was said that our criminal code was designed to work the same change in pleading and practice in criminal actions that is wrought by the Code of Civil Procedure in civil actions, and that therefore it was not always necessary to state the facts constituting the offense with the same particularity as was required in indictments by the common law. To the same effect is *People* v. *Cronin*, 34 Id. 191. The test of sufficiency of pleadings is found in the codes themselves: *People* v. *Murphy*, 39 Id. 52; *People* v. *Dick*, 37 Id. 277; *People* v. *Ah Woo*, 28 Id. 205; see also *People* v. *Sandford*, 43 Id. 29.

Bill of particulars of evidence relied on by the prosecution cannot be demanded by the defense: *People* v. *Alviso*, 55 Cal. 230.

949. *First pleading by the people is indictment or information.*

SEC. 949. The first pleading on the part of the people is the indictment or information. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 12 (*Ban. ed.* 158); *took effect immediately.*]

The amendments of April 9, 1880, to the various sections of this chapter simply conform the reading to the proceeding by information.

Information: See sec. 809, note; cited generally, *People* v. *Carlton*, 57 Cal. 561; *Kalloch* v. *Superior Court*, 56 Id. 229; *People* v. *Tisdale*, Id. 727; *People* v. *Williams*, Id. 819; *People* v. *Carlton*, 7 Id. 108.

Indictment: See sec. 959, and notes.

Signing.—The name of the district attorney may be subscribed by his deputy: *People* v. *Darr*, 61 Cal. 554.

950. *Indictment or information, what must contain.*

SEC. 950. The indictment or information must contain:

1. The title of the action, specifying the name of the court to which the same is presented, and the names of the parties;

2. A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 12 (*Ban. ed.* 158); *took effect immediately.*]

Indictment defined: Sec. 917.

Title of the action.—An indictment or information filed in San Francisco may be entitled either as of the county of San Francisco, or as of the city and county of San Francisco: *People* v. *Connor*, 17 Cal. 354; *People* v. *Beatty*, 14 Id. 566.

Name of parties.—Omitting the name of the county in the title is a technical defect not affecting the substantial rights of the defendant: *People* v. *Biggins*, 3 West Coast Rep. 678. If defendant be not indicted by his true name, he must declare his true name when arraigned, and if he do not, he may properly be proceeded against by the name in the indictment: Sec. 989. The addition "Jr." is no part of a name proper; and when it does not appear that there were two persons of the name, or that the party was misled, its insertion in a criminal complaint is immaterial: *City and County of San Francisco* v. *Randall*, 54 Cal. 408. Where the indictment was against James B. Boggs, and the verdict pronounced "the defendant J. M. Boggs" guilty: *Held*, that the error in the initial of the middle name of defendant in the verdict was immaterial: *People* v. *Boggs*, 20 Id. 432.

The mere omission of the initial of the middle name of the defendant is immaterial, it not in any way prejudicing him: *People* v. *Ferris*, 56 Cal. 442, citing *People* v. *Boggs*, *supra*, and *People* v. *Lockwood*, 6 Id. 205; see also secs. 953, 956.

Statement of acts constituting offense: Sec. 959, note.

951. *Form of indictment.*

SEC. 951. It may be substantially in the following form: The people of the state of California against A B, in the superior court of the county of ——, the —— day of ——, A. D. eighteen ——. A B is accused by the grand jury of the county of ——, by this indictment (or by the district attorney by this information), of the crime of (giving its legal appellation, such as murder, arson, or the like, or designating it as felony or misdemeanor), committed as follows: The said A B, on the —— day of ——, A. D. eighteen ——, at the county of —— (here set forth the act or omission charged as an offense), contrary to the form, force, and effect of the statute in such case made and provided, and against the peace and dignity of the people of the state of California. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 12 (*Ban. ed.* 158); *took effect immediately.*]

See also sec. 959.

Caption omitting county: See note to previous section.

Conclusion sufficient: See *People* v. *Biggins*, 3 West Coast Rep. 678, where the objection that the information stated the deceased to have died *contra formam*, etc., and not that the acts of the defendant were contrary, etc., was held hypercritical.

952. *Indictment must be direct and certain.*

SEC. 952. It must be direct and certain as it regards:

1. The party charged;

2. The offense charged;

3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

Indictment when sufficient: See sec. 959, note. If the indictment be direct and certain as to the party charged, the offense charged, and states the particular circumstances which constitute the offense in ordinary and concise language, and in such a way that a person of ordinary understanding can know what was intended, it is sufficient: *People* v. *Saviers*, 14 Cal. 29. If the indictment does not state the particular circumstances, when they are necessary to constitute a complete offense, the defendant may demur on that ground; but if he fails to demur, a motion in arrest of judgment will be denied: *People* v. *Swenson*, 49 Id. 388. But see *People* v. *Martin*, 52 Id. 201. Where the offense charged admits of degrees, the indictment should charge the offense generally, and leave the degree to be determined by the verdict: *People* v. *Jefferson*, Id. 452; see also sec. 921, note.

Names of parties: See note to sec. 930.

953. *When defendant is indicted by fictitious name, etc.*

SEC. 953. When a defendant is charged by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being charged by the name mentioned in the indictment or information. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 13 (*Ban. ed.* 158); *took effect immediately.*]

Indictment by wrong name.—In *People* v. *Kelly*, 6 Cal. 210, it was urged in argument that the above section was in violation of the constitution; that in ordering the true name to be inserted upon the minutes the court altered the indictment in a material part, so that it was no longer an indictment found and presented by a grand jury. The court, however, held the section to be constitutional, the particular name by which defendant is designated being immaterial. See also *People* v. *Jim Ti*, 32 Id. 60; *People* v. *Ah Kim*, 34 Id. 189; and see in note to sec. 951.

Inserting true name, illustration of this practice: See *People* v. *Le Roy*, 3 West Coast Rep. 785.

954. *What indictment or information must charge.*

SEC. 954. The indictment or information must charge but one offense, but the same offense may be set forth in different forms under different counts, and when the offense may be committed by the use of different means, the means may be alleged in the alternative in the same count. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 13 (*Ban. ed.* 158); *took effect immediately.*]

Objection, how taken: See sec. 1004, note. The objection to the indictment or information that two offenses are charged therein, or that the offense is charged in more than one form, must be taken by demurrer, otherwise it is waived: *People* v. *Weaver*, 47 Cal. 106; *People* v. *Burgess*, 35 Id. 115; *People* v. *Garnett*, 29 Id. 622; *People* v. *Connor*, 17 Id. 354. For an instance where the demurrer ought to have been sustained, see *People* v. *Quvise*, 56 Id. 396. The objection should be raised by special demurrer, where the pleading does not comply with sections 950, 951, and 952; general demurrer or motion in arrest will not reach the defect: *People* v. *Feilen*, 58 Id. 218.

Indictments charging more than one offense: See a valuable note to *Ben* v. *State*, 58 Am. Dec. 238–240. An indictment which charges the defendant with the murder of three persons charges three offenses: *People* v. *Alibez*, 49 Cal. 452. Where an indictment charged an officer of a corporation with concurring in the making of a statement of its condition which was false, and also with concurring in the publication of such false statement, a demurrer that the indictment charged more than one offense was sustained: *People* v. *Cooper*, 53 Id. 647. So also an indictment which charges burglary mixed with larceny was held to charge two offenses: *People* v. *Garnett*, 29 Id. 622. And where it is charged that one person stole the goods and another feloniously received them, knowing them to be stolen, two offenses are charged, and against different persons: *People* v. *Hawkins*, 34 Id. 181. If an indictment for forgery contains two counts, each containing a copy of the instrument alleged to have been forged, it will not be presumed, in the absence of an averment, that both are copies of one and the same instrument: *People* v. *Shotwell*, 27 Id. 394. If the indictment contains more than one count, it must plainly appear on its face that the matters set forth in the different counts are but different descriptions of one and the same transaction: *People* v. *Thompson*, 28 Id. 214. An indictment which charged both burglary and house-breaking was held to charge two offenses: *People* v. *Taggart*, 43 Id. 81. Larceny and embezzlement cannot be united in one information: *People* v. *De Coursey*, 61 Cal. 135; and see *People* v. *Quvise*, 56 Id. 396.

Indictments charging one offense only. The name given in the indictment to the offense charged is not of itself a charge of the offense, and a mistake in regard to it is not fatal. Where the indictment recited that defendant was accused therein of the crime of "assault with intent to commit murder," and then proceeded to state facts which showed that defendant had administered poison with intent to kill,

it was held that the indictment did not charge two offenses: *People* v. *Cuddihi*, 54 Cal. 53. Nor does an indictment which charges defendant with having feloniously assaulted B, and with having murdered B: *People* v. *Weaver*, 47 Id. 106. Nor does an indictment which charges the same person with the crime of rape and also of an assault with intent to commit rape: *People* v. *Tyler*, 35 Id. 553. Where the indictment charged defendant with having forged an indorsement on a draft, and also with having uttered the draft, knowing the indorsement to be forged, it was held to charge but one offense: *People* v. *Frank*, 28 Id. 507. It is allowable to charge the same offense in different forms in an indictment. Thus in one count the indictment may charge the goods stolen to have been the goods of A, in another count that they were the goods of B, etc.: *People* v. *Connor*, 17 Id. 354. An indictment which charges a tax collector with having in his possession, with intent to circulate, and with actually putting in circulation, licenses other than those authorized by law, does not charge two offenses: *People* v. *De la Guerra*, 31 Id. 459; see also *People* v. *Valencia*, 43 Id. 552; *People* v. *Ah Own*, 39 Id. 604; *People* v. *Montejo*, 18 Id. 38.

Several counts: See sec. 957, note. "While under our statute the indictment or information may charge the same offense in different forms under different counts, this must be done in such a way as to show clearly upon the face of the indictment or information that the matters and things set forth in the different counts are descriptive of one and the same offense: *People* v. *Thompson*, 28 Cal. 216:" *People* v. *Garcia*, 58 Id. 102, 103.

955. *Statement as to time when offense was committed.*

SEC. 955. The precise time at which the offense was committed need not be stated in the indictment or information, but it may be alleged to have been committed at any time before the finding or filing thereof, except where the time is a material ingredient in the offense. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 13 (*Ban. ed.* 158); *took effect immediately.*]

Averment of time.—The time of the commission of the offense is sufficiently certain if it is stated to be prior to the finding of the indictment: *People* v. *Littlefield*, 5 Cal. 355; *People* v. *Kelly*, 6 Id. 210. And when it is charged that the offense was committed on a particular day, which was prior to the finding of the indictment, there is no need of an averment that it was prior to such time: *People* v. *Lafuente*, Id. 202. An indictment for murder used as a substitute for an indictment for manslaughter must show that the prosecution of the latter offense is not barred by lapse of time. *Prima facie* lapse of time is a good defense; if there is any matter which exempts the case from the general rule, it should be stated in the indictment: *People* v. *Miller*, 12 Id. 291; *People* v. *Montejo*, 18 Id. 38; see also *People* v. *Burgess*, 35 Id. 115; *People* v. *Beatty*, 14 Id. 566.

956. *Statement as to person injured or intended to be.*

SEC. 956. When an offense involves the commission of, or an attempt to commit, a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

Name of person injured.—At common law, a substantial variance between the name of the party injured, as laid in the indictment, and as given in evidence, was fatal; but this rule is modified by the above section: *People* v. *Potter*, 35 Cal. 110; see also *People* v. *Dick*, 37 Id. 277. When, on the trial for assault with intent to inflict great bodily injury, the proof shows a misnomer of the person injured, such variance will be held material, unless there be other circumstances sufficient to identify the offense: *People* v. *McNealy*, 17 Id. 332. Describing the party injured by several *aliases*, of which one is her true name, is sufficient: *People* v. *De Cleer*, 60 Id. 382. So giving the name by which the party injured is commonly known, although he may have another name, is sufficient: *People* v. *Leong Quong*, Id. 107. So charging that the property was stolen from "the store of one S. Loupe," when the store was known as "Loupe's store," and belonged to three persons of the name of Loupe, the variance is immaterial: *People* v. *Edwards*, 59 Id. 359. An indictment for robbery, which fails to state that the property taken was the property of some person other than the defendant, is fatally defective: *People* v. *Vice*, 21 Id. 344. If stolen property belonged to a partnership, the indictment should state the individual names of the partners; if it belonged to a corporation, the indictment should state the corporate name: *People* v. *Bogart*, 36 Id. 245. An indictment for forgery need not necessarily charge that the banking-house whose bills were forged was in fact an incorporated company: *People* v. *Ah Sam*, 41 Id. 645. So, in an indictment for arson committed with intent to defraud an insurance company, a variance between the name of the company as charged in the indictment and as proved on the trial is no ground for the arrest of the judgment: *People* v. *Hughes*, 29 Id. 257; but such indictment should aver that the company is a corporation, if such be the fact, or that it is a partnership composed of certain individuals, naming them, if such be the fact. Mere averment of a company named in such an indictment amounts, in a legal sense, to an entire absence of any averment as to the party intended to be injured, and not to an "erroneous allegation" as to such party: *People* v. *Schwartz*, 32 Id. 160.

957. *Construction of words used in indictment or information.*

SEC. 957. The words used in an indictment or information are construed in their usual acceptance in common language, except such words and phrases as are defined by law, which are construed according to their legal meaning. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 13 (*Ban. ed.* 159); *took effect immediately.*]

Words and phrases defined by law: See *ante*, sec. 7.

Rule of construction: See *People* v. *Littlefield*, 5 Cal. 355; *People* v. *Thompson*, 4 Id. 238; *People* v. *Saviers*, 14 Id. 29; *People* v. *Cronin*, 34 Id. 191; *People* v. *Murphy*, 39 Id. 52; *People* v. *Phipps*, Id. 326.

958. *Words used in a statute need not be strictly pursued.*

SEC. 958. Words used in a statute to define a public offense need not be strictly pursued in the indictment or information, but other words conveying the same meaning may be used. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 13 (*Ban. ed.* 159); *took effect immediately.*]

Manner of charging the offense.—Where the acts constituting the offense are sufficiently stated to give explicit information of the offense charged, the indictment, though it may be liable to criticism as to form, will nevertheless be held sufficient, even if the language of the statute be not strictly followed: *People* v. *Potter*, 35 Cal. 110; *People* v. *Phipps*, 39 Id. 326. As, however, a long line of decisions has established that if the offense be charged in the language of the statute it is sufficient, that would appear to be the better and safer practice, unless the circumstances of a particular case furnish a reason for doing otherwise: See *People* v. *Thompson*, 4 Id. 238; *People* v. *Parsons*, 6 Id. 487; *People* v. *Dolan*, 9 Id. 576; *People* v. *Murray*, 10 Id. 309; *People* v. *McGuire*, 26 Id. 635; *People* v. *White*, 34 Id. 183; *People* v. *Cronin*, Id. 191; *People* v. *Martin*, 32 Id. 91; *People* v. *Burke*, 34 Id. 661; *People* v. *Lewis*, 61 Id. 366; *People* v. *De la Cour Soto*, 63 Id. 165; see also note to sec. 959.

959. *Indictment or information, when sufficient.*

SEC. 959. The indictment or information is sufficient if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it, though the name of the court be not stated;

2. If an indictment, that it was found by a grand jury of the county in which the court was held, or if an information, that it was subscribed and presented to the court by the district attorney of the county in which the court was held;

3. That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is to the jury or district attorney, as the case may be, unknown;

4. That the offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county, is triable therein;

5. That the offense was committed at some time prior to the time of finding the indictment or filing of the information;

6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended;

7. That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 13 (*Ban. ed.* 159); *took effect immediately.*]

Form of indictment or information: See sec. 951.

Signing district attorney's name: See in note to sec. 949.

Conclusion of indictment or information: Sec. 951, note.

Title of the action: Sec. 950, note.

Finding of indictment: Sec. 940, and notes.

Presentation of indictment: Sec. 944, note.

Information, prosecution by: Sec. 809, note.

Name of defendant: Secs. 950, note, 953, note.

Time, averment of: Sec. 955, note.

Venue, statement of: The indictment must allege that the offense was committed within the county in which it is found: *People* v. *O'Neil*, 48 Cal. 257. Where the offense consists of a transaction occurring partly in one county and partly in another, the indictment should show that fact: *People* v. *Ah Ow*, 39 Id. 604. In an indictment for larceny, the venue may be laid in any county into which the stolen property may be conveyed: *People* v. *Mellon*, 40 Id. 648; *People* v. *Garcia*, 25 Id. 531; *People* v. *Robles*, 29 Id. 421. Where the offense charged was committed on a vessel on the inland waters of this state, the indictment should set forth all the facts to show that the court has jurisdiction: *People* v. *Dougherty*, 7 Id. 395. Where it is charged that the offense was committed within a certain city and county which are within the jurisdiction of the court, the venue is sufficiently stated: *People* v. *Lafuente*, 6 Id. 202; see *People* v. *Robinson*, 17 Id. 363. The prosecution must prove the venue as laid in the indictment: *People* v. *Roach*, 48 Id. 382. Although no witness testifies in so many words to the venue of a crime, yet if the whole testimony taken together leaves no room for reasonable doubt on that point the venue is sufficiently proved: *People* v. *Manning*, Id. 335; see also *People* v. *Williams*, 18 Id. 187; *People* v. *Hodges*, 27 Id. 340; *People* v. *Valenzuella*, 6 Pac. C. L. J. 561. See *People* v. *Lockwing*, 61 Cal. 380, for evidence sufficient to support the venue.

Statement of acts constituting the offense: See sec. 950. The substantial facts necessary to constitute the offense must be stated with such reasonable certainty as to enable a person of ordinary understanding to know what was intended, and to enable the court to pronounce judgment; but the facts need not be stated with the particularity required at common law: *People* v. *Dolan*, 9 Cal. 576; *People* v. *Ah Woo*, 28 Id. 205; *People* v. *Rodriguez*, 10 Id. 50. The indictment is sufficient if it charges the offense in the language of the statute: See sec. 958, note. If the indictment is certain as to the person and offense charged, and states all the acts necessary to constitute a complete offense, it contains all that is required: *People* v. *Murphy*, 39 Id. 52. If, in the charging part of the indictment language capable of two interpretations is used, only one of which imports that defendant is guilty, the indictment will be held insufficient: *People* v. *Williams*, 35 Id. 671. The indictment need not state in terms that the offense charged is a felony or misdemeanor: *People* v. *War*, 20 Id. 117. If the facts constituting the offense are sufficiently stated, it is immaterial whether the legal appellation or any appellation of the offense is stated: *People* v. *Phipps*, 39 Id. 326. It is not absolutely essential that the term "feloniously" be used: *People* v. *Olivera*, 7 Id. 403; *People* v. *Parsons*, 6 Id. 487. It is held that a bare negative qualification need not be averred in an indictment, but must be relied on as a matter of defense at the trial: *People* v. *Nugent*, 4 Id. 341; *People* v. *Vanard*, 6 Id. 562; *People* v. *English*, 30 Id. 214. If the statute, in defining an offense, enumerates a series of acts, all of which, when taken together, constitute the offense, all such acts may be charged in a single count: *People* v. *Frank*, 28 Id. 507; *People* v. *Murphy*, 39 Id. 52.

Pleading examination before committing magistrate.—This section "does not require nor intimate that the information shall contain any averment with reference to the examination of defendant before a committing magistrate:" *People* v. *Shubrick*, 56 Cal. 565.

Conjunctive statement proper.—Where the act constituting the offense is described in the statute by different terms stated disjunctively, it is well described in the indictment by the use of all stated conjunctively: *People* v. *Ah Woo*, 28 Cal. 205; *People* v. *Frank*, 28 Id. 507; *People* v. *Hood*, 6 Id. 236. And if not so stated, the indictment will be held bad on demurrer. But this rule has no application where the words used disjunctively in the statute are synonymous: *People* v. *Tomlinson*, 35 Id. 503.

Number of counts in indictment.—A number of decisions have sustained indictments containing two or more counts: *People* v. *Ferris*, 56 Cal. 442; *People* v. *Tomlinson*, 35 Id. 503; *People* v. *Thompson*, 28 Id. 214; *People* v. *Shotwell*, 27 Id. 394; *People* v. *Bailey*, 23 Id. 577; *People* v. *Connor*, 17 Id. 354; *People* v. *Bogart*, 36 Id. 245; *People* v. *Ah Sam*, 41 Id. 645; *People* v. *Shepardson*, 48 Id. 189; *People* v. *Davidson*, 5 Id. 133; see sec. 954.

Abortion: Sec. 274, note; 1 Wharton's Precedents of Indictments, 220.

Accessary before the fact.—The distinction between principals and accessaries before the fact has been abolished: Sec. 30, note. Cases in which the defendant was indicted as accessary before the fact are: *People* v. *Cryder*, 6 Cal. 23; *People* v. *Schwartz*, 32 Id. 160; *People* v. *Crenshaw*, 46 Id. 65; *People* v. *Outeveras*, 48 Id. 19; *People* v. *Shepardson*, Id. 189; *People* v. *Bearss*, 10 Id. 68; *People* v. *Campbell*, 40 Id. 129.

Accessary: Sec. 30, note. An indictment against one as accessary must contain, in addition to other matters, all the averments necessary in an indictment against the principal: *People* v. *Thrall*, 50 Cal. 415.

Adultery: Sec. 266, note.

Altering brands: *People* v. *Hall*, 19 Cal. 425.

Arson: Sec. 447, note. An indictment charging that defendant did "burn, or caused to be burned, a certain dwelling-house," is bad, because the charge is laid in the alternative: *People* v. *Hood*, 6 Cal. 236. But see *People* v. *Myers*, 20 Id. 76. The indictment may charge the ownership of the burned property to be in a tenant: *People* v. *Wooley*, 44 Id. 494. Or it may describe it as the property of the owner, though it is occupied by a tenant: *People* v. *Fisher*, 51 Id. 319; 1 Wharton's Precedents of Indictments, 361; see also *People* v. *Schwartz*, 32 Cal. 160.

Assault: Sec. 240, note; 1 Wharton's Precedents of Indictments, 231–258.

Assault with deadly weapon: Sec. 245, note. The indictment should charge that the weapon used was deadly, or state such facts as necessarily show that it was deadly: *People* v. *Jacobs*, 29 Cal. 579; *People* v. *Congleton*, 44 Id. 92. An averment that defendant was armed with a deadly weapon and made an assault will not support a judgment for a felonious assault: *People* v. *Vierra*, 52 Id. 451; see also *People* v. *War*, 20 Id. 117; and *People* v. *Villa-*

rino, 4 West Coast Rep. 693, where an indictment was held good.

A demurrer was improperly sustained to an information charging defendant with having committed the crime of "an assault by means likely to produce great bodily injury, to wit, with a brickbat weighing about five pounds:" *People* v. *Fahey*, 64 Cal. 342. So a demurrer was improperly sustained to an indictment for throwing a Chinaman out of a third-story window: *People* v. *Emmons*, 61 Id. 487.

Assault with intent to commit murder: Sec. 217, note. For form of indictment which was held sufficient, see *People* v. *English*, 30 Cal. 215; and *People* v. *DeCleer*, 60 Id. 382.

Assault with intent to commit rape: Sec. 220, note; *People* v. *Grrr*, 53 Cal. 629; *People* v. *Estrada*, 53 Id. 600; *People* v. *O'Neil*, 48 Id. 257; *People* v. *Brown*, 47 Id. 447.

Bigamy: Sec. 281, note.

Bribery: Sec. 68, note; *People* v. *Purley*, 2 Cal. 564.

Burglary: Sec. 459, note. The indictment should charge burglary generally, and leave the degree to be determined by the jury if the plea be not guilty, or by the court if the plea be guilty: *People* v. *Jefferson*, 52 Cal. 452; *People* v. *Barnnart*, 59 Id. 381. Charging the offense in the language of the statute is sufficient: *People* v. *Lewis*, 61 Id. 366, 367. It need not state the value of the property which defendant intended to steal: *People* v. *Ah Ye*, 31 Id. 451. Nor is it necessary to charge whose goods defendant intended to steal, or that there were any goods in the house which he could steal: *People* v. *Shaber*, 32 Id. 36. The ownership of the burglarized room may be charged to be in one who lodges therein: *People* v. *St. Clair*, 38 Id. 136. The indictment should not charge burglary mixed with larceny. The larceny, if it has been committed, should be made the foundation of a separate indictment: *People* v. *Garnett*, 29 Id. 622; see also *People* v. *Long*, 43 Id. 444.

Entry with intent to commit "larceny" describes no offense: *People* v. *St. Clair*, 56 Cal. 406. So charging an entry with intent to commit a felony is insufficient: *People* v. *Nelson*, 58 Id. 104.

See an immaterial variance in describing the store entered: *People* v. *Edwards*, 59 Cal. 360.

Burning insured building: Sec. 548, note; *People* v. *Hughes*, 29 Cal. 257; *People* v. *Schwartz*, 32 Id. 160.

Conspiracy: Sec. 182, note; 2 Bish. Crim. Proc. 204–226.

Counterfeiting: Sec. 447, note; *People* v. *Stanton*, 39 Cal. 698; *People* v. *Ah Sam*, 41 Id. 645; 1 Wharton's Precedents of Indictments, 331–341.

Crime against nature: Sec. 286, note. Charging attempt to commit with the person of H. G. "the infamous crime against nature" is good: *People* v. *Williams*, 59 Cal. 397.

Embezzlement: Secs. 503, note, 967, note. The indictment should state the description of the property embezzled with the same particularity as is required in an indictment for larceny: *People* v. *Cox*, 40 Cal. 275; see also *People* v. *Bailey*, 23 Id. 577; *People* v. *Garcia*, 25 Id. 531; *Ex parte Hedley*, 31 Id. 108; *People* v. *De la Guerra*, 31 Id. 416; *People* v. *Hust*, 49 Id. 653; *People* v. *Flores*, 64 Id. 426.

Forgery: Secs. 470, note, 965. To constitute forgery, the forged instrument must be one which, if genuine, may injure another; and the indictment should show that such is its legal character, either from its description of the instrument itself, or by averment of matter *aliunde* which will show it to be of that character: *People* v. *Tomlinson*, 35 Cal. 503; see also *People* v. *Frank*, 28 Id. 507; *People* v. *Ah Woo*, Id. 205; *People* v. *Ah Sam*, 41 Id. 645; 1 Wharton's Precedents of Indictments, 266.

In the indictment a word in the original was copied as "shipped," but in the original offered in evidence the word was spelled "shiped:" held an immaterial variance: *People* v. *Cummings*, 57 Cal. 88.

Gaming: Sec. 330, note; *People* v. *Saviers*, 14 Cal. 29.

Grand larceny. — Immaterial departure from statutory form: *People* v. *O'Brien*, 64 Cal. 53.

Larceny: Secs. 484, note, 967, note. An indictment for larceny which charges the stealing of several articles of property, and states the value of all in the aggregate, but does not give the value of each article by itself, contains a sufficient averment of the value of the stolen property: *People* v. *Robles*, 34 Cal. 591; *People* v. *Green*, 15 Id. 512. The indictment should state the ownership of the stolen property: *People* v. *Hughes*, 41 Id. 234; *People* v. *Bogart*, 36 Id. 245; and allege the ownership as of the day when the offense was committed: *People* v. *Lewis*, 64 Id. 404. It will not be held defective because in one count it charges the stolen goods to be the property of A, and in another count states the same goods to be the property of B: *People* v. *Connor*, 17 Id. 354. Where the larceny charged is of that class of property the stealing of which is grand larceny, without regard to its value, no averment of the value is necessary: *People* v. *Townsley*, 39 Id. 405. Under an indictment for robbery, the jury may find the defendant guilty of the crime of larceny: *People* v. *Jones*, 53 Id. 58; see also *People* v. *Jim Ti*, 32 Id. 60; *People* v. *Smith*, 15 Id. 408; *People* v. *Jersey*, 18 Id. 337; *People* v. *Brown*, 27 Id. 500; *People* v. *Linn*, 23 Id. 150; *People* v. *Strong*, 46 Id. 302; 1 Wharton's Precedents of Indictments, 381–390. An indictment for larceny which is capable in the charging part of two interpretations without doing violence to its terms is bad: *People* v. *Williams*, 35 Cal. 671.

There is no such offense as "larcey," nor does the rule of *idem sonans* apply: *People* v. *St. Clair*, 56 Cal. 406.

For other informations held sufficient, see *People* v. *Stanford*, 64 Cal. 27, citing *People* v. *Salazar*, 6 Pac. C. L. J. 569; also *People* v. *Nelson*, 56 Cal. 77.

Libel: Secs. 248, note, 964, note.

Manslaughter: Sec. 192, note; *People* v. *Miller*, 12 Cal. 291; 1 Wharton's Precedents of Indictments, 129–152; see *post*, "Murder."

Mayhem: Sec. 203, note; *People* v. *Golden*, 62 Cal. 542.

Misconduct in office by new city hall commissioners. Indictment defective for not charging that the act complained of was done by defendants as a "board," and in not giving the name of the party with whom the improper contract was made: *People* v. *Kalloch*, 60 Cal. 113.

Murder: Sec. 187, note. For form of indictment which was held sufficient, see *People*

v. *King*, 27 Cal. 507. In that case it was held that in an indictment for murder it is not necessary to aver the means by which the homicide was committed, or the nature and extent of the wound, or the part of the body upon which it was inflicted. Nor should the degree of the murder be stated; but if it is stated, the indictment is not for that reason vitiated. The statement of the degree may be treated as surplusage: Id.; *People* v. *Nichol*, 34 Id. 211; *People* v. *Dolan*, 9 Id. 576; *People* v. *Vance*, 21 Id. 400. An indictment charging that defendant on the day named "did feloniously and unlawfully, and of their malice aforethought, kill and murder one" J. R., contrary, etc., is good: *People* v. *Alviso*, 55 Id. 230. So is one charging the offense in the language of the statute: *People* v. *De la Cour Soto*, 64 Id. 165. The indictment is sufficient if a person of ordinary intelligence can understand from it that under such circumstances as showed a felonious intent a mortal wound was inflicted by the defendant upon the deceased, of which wound deceased died within a year and a day from its infliction: *People* v. *Dolan*, 9 Id. 576; *People* v. *Cronin*, 34 Id. 191; *People* v. *Martin*, 47 Id. 101. That it is not necessary to set forth and describe the weapons used, or the wound inflicted, see *People* v. *Hong Ah Duck*, 61 Id. 387; *People* v. *King*, 27 Id. 511; *People* v. *Cronin*, *supra*; *People* v. *Martin*, *supra*. It is not necessary that the indictment should specifically aver that the killing was "willful, deliberate, and premeditated:" *People* v. *Murray*, 10 Id. 309. Malice aforethought is a necessary ingredient in the crime of murder, and should, therefore, be alleged in the indictment: *People* v. *Urias*, 12 Id. 325; *People* v. *Bonilla*, 38 Id. 699. But this term may be omitted, provided terms are employed which in their import are equivalent: *People* v. *Vance*, 21 Id. 400. See *People* v. *Schmidt*, 63 Id. 23, where words of equivalent import were not used. If the indictment is certain as to the person and offense charged, and states all the acts necessary to constitute a complete offense, it is sufficient: *People* v. *Murphy*, 39 Id. 52; see also *People* v. *Steventon*, 9 Id. 273; *People* v. *Thompson*, 4 Id. 238; *People* v. *Aro*, 6 Id. 207; *People* v. *Wallace*, 9 Id. 30; *People* v. *Lloyd*, Id. 54; *People* v. *Judd*, 10 Id. 313; *People* v. *Ybarra*, 17 Id. 166; *People* v. *Sanford*, 43 Id. 29; *People* v. *Valencia*, Id. 552; *People* v. *Weaver*, 47 Id. 106; *People* v. *Alibez*, 49 Id. 452.

Office: See "Misconduct in Office," *supra*.

Perjury—Subornation of perjury: Secs. 118, note, 127, note, 966, note. An indictment for perjury, charging that the accused, in a certain proceeding, describing it, "did willfully, corruptly, and falsely swear," etc., but not alleging that the perjury was committed "feloniously," is nevertheless sufficient: *People* v. *Parsons*, 6 Cal. 487. See also *People* v. *Perazzo*, 64 Id. 106; *People* v. *Kelly*, 59 Id. 372; *People* v. *Barry*, 63 Id. 62. Attempt to suborn perjury is no offense: *People* v. *Thomas*, Id. 482.

Rape: Sec. 261, note. An indictment which charged that defendant "did unlawfully and feloniously have carnal knowledge of a certain female child, named ——, she, the said ——, then being under ten years of age, to wit, of the age of nine years and upwards," is sufficient: *People* v. *Mills*, 17 Cal. 276. Charging an attempt to commit rape, without specifying under which one of the circumstances constituting rape, is nevertheless sufficient: *People* v. *Burns*, 63 Id. 614. The indictment need not allege that the person upon whom the outrage was committed was not the wife of defendant: *People* v. *Estrada*, 53 Id. 600. Nor need the age of the defendant be stated: *People* v. *Ah Yek*, 29 Id. 575. If the indictment follows the language of the statute, it is sufficient: *People* v. *Burke*, 34 Id. 661. See also *People* v. *Tyler*, 35 Id. 553.

Receiving stolen property: Sec. 496, note; *People* v. *Montejo*, 18 Cal. 38; *People* v. *Hawkins*, 34 Id. 181; *People* v. *Avila*, 43 Id. 196.

Riot: Sec. 404, note.

Robbery: Sec. 211, note. If the indictment fails to allege that the property taken was the property of some person other than defendant, it is fatally defective: *People* v. *Vice*, 21 Cal. 344. The indictment is not bad because it charges that the property was forcibly and violently taken from one person and against his will, and that another person was the owner of it, though it does not allege that it was taken against the will of the owner: *People* v. *Shuler*, 28 Id. 490. The indictment should state that the property was taken from the person of another. To allege that it was taken from "another person" is not sufficient: *People* v. *Beck*, 21 Id. 385. See also *People* v. *Jones*, 53 Id. 58; *People* v. *Nelson*, 56 Id. 77; *People* v. *Boyle*, 64 Id. 153.

Seduction: Sec. 266, note; *People* v. *Roderigas*, 49 Cal. 9.

Selling land twice: Sec. 553, note; *People* v. *Garnett*, 35 Cal. 470.

Violating sepulture.—An indictment charging the defendant with the crime of "violating sepulture," stating the facts, is sufficient: *People* v. *Dalton*, 58 Cal. 226.

960. *Indictment, etc., when not insufficient.*

SEC. 960. No indictment or information is insufficient, nor can the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form which does not tend to the prejudice of a substantial right of the defendant upon its merits. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 14 (*Ban. ed.* 159); *took effect immediately.*]

Formal defect insufficient.—Where the district attorney signed the indictment officially, but did not specify the county of which he was district attorney, the defect was held immaterial: *People* v. *Ashnauer*, 47 Cal. 98; see also *People* v. *Dick*, 37 Id. 277; *People* v. *Clarke*, 7 Pac. C. L. J. 177; *People* v. *Dalton*, 58 Cal. 226. The omission in an indictment of the initial letter of the defendant's middle name cannot prejudice: *People* v. *Ferris*, 56 Id. 442. The above section was cited to support the ruling that in information for murder the weapons used need not be set forth, nor the wound described, in *People* v. *Hong*

Ah Duck, 61 Id. 387 So, also, in overruling an objection to an indictment for grand larceny, in which the concluding words of the statutory form had been misplaced: *People* v. *O'Brien*, 64 Id. 53.

961. *Presumptions of law, etc., need not be stated.*

SEC. 961. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment or information. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 14 (*Ban. ed.* 160); *took effect immediately.*]

962. *Judgments, etc., how pleaded.*

SEC. 962. In pleading a judgment or other determination of or proceeding before a court or officer of special jurisdiction, it is not necessary to state the facts constituting jurisdiction; but the judgment or determination may be stated as given or made, or the proceedings had. The facts constituting jurisdiction, however, must be established on the trial.

963. *Private statutes, how pleaded.*

SEC. 963. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

Reciting private statutes.—At the common law a private or other statute of which the courts did not judicially know, must be recited in an indictment founded upon it: Bishop on Statutory Crimes, secs. 396, 405, 406; 1 Bish. Crim. Proc., sec. 609. Under this section it is sufficient to refer to such statute by its title and day of passage.

964. *Pleading in indictment for libel.*

SEC. 964. An indictment or information for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment or information is founded; but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 14 (*Ban. ed.* 160); *took effect immediately.*]

See sec. 248, note.

965. *Pleading in indictment or information for forgery, where instrument destroyed or withheld by defendant.*

SEC. 965. When an instrument which is the subject of an indictment or information for forgery has been destroyed or withheld by the act or the procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment or information, and established on the trial, the misdescription of the instrument is immaterial. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 14 (*Ban. ed.* 160); *took effect immediately.*]

See sec. 959, in note, and sec. 470, note.

966. *Pleading in an indictment or information for perjury or subornation of perjury.*

SEC. 966. In an indictment or information for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court and before whom the oath alleged to be false was taken, and that the court, or the person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment or information need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court

or person before whom the perjury was committed. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 14 (*Ban. ed.* 160); *took effect immediately.*]

See secs. 959 in note, 118 and note, 127 and note.

Information for perjury: See *People* v. *Kelly*, 59 Cal. 372.

967. *Pleading in indictment or information for larceny or embezzlement.*

SEC. 967. In an indictment or information for the larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 15 (*Ban. ed.* 160); *took effect immediately.*]

See secs. 959, notes, 484, note, 503, note; *People* v. *Cox*, 40 Cal. 275; *People* v. *Nelson*, 56 Id. 77.

Sufficient information: See *People* v. *Flores*, 64 Cal. 426.

968. *Pleading in indictment or information for selling, etc., lewd and obscene books.*

SEC. 968. An indictment or information for exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 15 (*Ban. ed.* 160); *took effect immediately.*]

See secs. 666, note, and 667, and note.

969. *Prior conviction of another offense.*

Section 969, relating to previous conviction of another offense, was repealed by act of April 9, 1880; Amendments 1880, 15 (Ban. ed. 161); took effect immediately.

The repealed section was as follows: "Sec. 969. In charging in an indictment the fact of a previous conviction of a felony, or of an attempt to commit an offense which, if perpetrated, would have been a felony, or of petit larceny, it is sufficient to state: 'That the defendant, before the commission of the offense charged in this indictment, was in [giving the title of the court in which the conviction was had] convicted of a felony [or attempt, etc., or of petit larceny].' If more than one previous conviction be charged in the indictment, the date of the judgment upon each conviction shall be stated, and not more than two previous convictions shall be charged in any one indictment; Amendment, approved March 30, 1874; Amendments 1873-4, 438; took effect July 1, 1874."

Effect of this repeal: See *People* v. *Boyle*, 64 Cal. 153; *People* v. *Lewis*, Id. 401; *People* v. *King*, Id. 338. Say the court in this last case: "It is necessary, since the repeal of sections 969 and 1025 of the Penal Code, in proceeding against him [accused] by indictment or information, not only to charge the facts of the previous conviction and subsequent commission of crime, but to prove them. The defendant must plead to both charges; and upon the issue raised by his plea both must be proved on his trial and be passed upon by the jury. There is no other mode of proving the facts."

970. *Indictment against several, one or more may be acquitted.*

SEC. 970. Upon an indictment or information against several defendants, any one or more may be convicted or acquitted. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 15 (*Ban. ed.* 161); *took effect immediately.*]

Presumption of defendant's innocence. If two persons be jointly or severally indicted for the same offense, the conviction of one does not raise the presumption that the other is innocent: *People* v. *Johnson*, 47 Cal. 122.

971. *Distinction between accessary before the fact and principal abrogated.*

SEC. 971. The distinction between an accessary before the fact and a principal, and principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commis-

sion, though not present, shall hereafter be prosecuted, tried, and punished as principals, and no other facts need be alleged in any indictment or information against such an accessary than are required in an indictment or information against his principal. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 15 (*Ban. ed.* 161); *took effect immediately.*]

Principals: Sec. 31, note; see *People* v. *Valenzuella*, 6 Pac. C. L. J. 561.
Accessaries: Secs. 32, note, 959 in note.

972. *Accessary may be indicted and tried though principal has not been.*

SEC. 972. An accessary to the commission of a felony may be prosecuted, tried, and punished, though the principal may be neither prosecuted nor tried, and though the principal may have been acquitted. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 15 (*Ban. ed.* 161); *took effect immediately.*]

Principals: Sec. 31, note. **Accessaries**: Secs. 32, note, 959 in note.

TITLE VI.

OF PLEADINGS AND PROCEEDINGS AFTER INDICTMENT AND BEFORE THE COMMENCEMENT OF THE TRIAL.

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CHAPTER I.

OF THE ARRAIGNMENT OF THE DEFENDANT.

976. *Defendant must be arraigned in court where indictment or information was found.*

SEC. 976. When the indictment or information is filed, the defendant must be arraigned thereon before the court in which it is filed, unless the cause is transferred to some other county for trial. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 15 (*Ban. ed.* 161); *took effect immediately.*]

The amendments of April 9, 1880, in this chapter simply conform the sections to the proceeding by information.
Arraignment: Sec. 988, note.
Change of venue: Sec. 1033, note.

See construction of the above section in determining that superior courts have not jurisdiction of cases of petit larceny: *Ex parte Wallingford*, 60 Cal. 103, 105.

977. *Defendant, when to be present at arraignment.*

SEC. 977. If the indictment or information be for a felony, the defendant must be personally present; but if for a misdemeanor, he may appear upon the arraignment by counsel. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 16 (*Ban. ed.* 161); *took effect immediately.*]

Arraignment: Sec. 988, note.
Plea by defendant: Sec. 1016, note.
Plea by attorney: Sec. 1016, note.
Personal attendance at trial: Sec. 1043, note.
Trial in absence of defendant: Sec. 1181, note.

978. *If in custody, to be brought before court.*

SEC. 978. When his personal appearance is necessary, if he is in custody, the court may direct, and the officer in whose custody he is must bring him before it to be arraigned.

Personal attendance.—In all cases amounting to a felony, the defendant must appear and plead in person, and must be personally present at the trial: Secs. 1016, note, 1043, note. If for a misdemeanor he may plead by counsel, and the trial may proceed in his absence: Id. A failure to appear at the trial, when the charge is a misdemeanor, either in person or by counsel, does not authorize the court to declare the bond given for such appearance forfeited: *People* v. *Ebner*, 23 Cal. 158; *People* v. *Budd*, 57 Id. 349.

979. *If discharged on bail, bench-warrant to issue.*

SEC. 979. If the defendant has been discharged on bail, or has deposited money instead thereof, and do not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench-warrant for his arrest.

980. *Bench-warrant, by whom and how issued.*

SEC. 980. The clerk, on the application of the district attorney, may, at any time after the order, whether the court is sitting or not, issue a bench-warrant to one or more counties.

981. *Form of bench-warrant.*

SEC. 981. The bench-warrant upon the indictment or information must, if the offense is a felony, be substantially in the following form: County of ——. The people of the state of California to any sheriff, constable, marshal, or policeman in this state: An indictment having been found (or information filed) on the —— day of ——, A. D. eighteen ——, in the superior court of the county of ——, charging C D with the crime of —— (designating it generally); you are therefore commanded forthwith to arrest the above-named C D, and bring him before that court (or if the indictment and information has been sent to another court, then before that court, naming it), to answer said indictment (or information), or if the court be not in session, that you deliver him into the custody of the sheriff of the county of ——.

Given under my hand, with the seal of said court affixed, this —— day of ——, A. D. ——.

By order of said court.

[SEAL.] E F, Clerk.

[*Amendment, approved April* 9, 1880; *Amendments* 1880, 16 (*Ban. ed.* 161); *took effect immediately.*]

982. *Directions in the bench-warrant if the offense is bailable.*

SEC. 982. The defendant, when arrested under a warrant for an offense not bailable, must be held in custody by the sheriff of the county in which the indictment is found or information filed, unless admitted to bail after an examination upon a writ of habeas corpus; but if the offense is bailable, there must be added to the body of the bench-warrant a direction to the following effect: "Or, if he requires it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer to the indictment (or information);" and the court, upon directing it to issue, must fix the amount of bail, and an indorsement must be made thereon and signed

by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of —— dollars." [*Amendment, approved April* 9, 1880; *Amendments* 1880, 16 (*Ban. ed.* 162); *took effect immediately.*]

Entitled to release from arrest upon bench-warrant.—A party who has been indicted for a bailable offense, and is under arrest on a bench-warrant, on which an order is indorsed directing the accused to be admitted to bail in a specified sum, is entitled to be discharged upon executing a bond in proper form and for the prescribed amount. No indorsement of approval on the bond is necessary: *People* v. *Penniman*, 37 Cal. 271.

983. *Bench-warrant, how served.*

SEC. 983. The bench-warrant may be served in any county, in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by the magistrate of that county.

984. *Proceeding on giving bail in another county.*

SEC. 984. If the defendant is brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings must be had thereon.

Arrests: Secs. 841-851, and notes; see *Ex parte Hung Sin*, 54 Cal. 102.

985. *Ordering defendant into custody or increasing bail when indictment is for felony.*

SEC. 985. When the information or indictment is for a felony, and the defendant, before the filing thereof, has given bail for his appearance to answer the charge, the court to which the indictment or information is presented, or in which it is pending, may order the defendant to be committed to actual custody, unless he gives bail in an increased amount, to be specified in the order. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 16 (*Ban. ed.* 162); *took effect immediately.*]

986. *Defendant, if present, when order made, to be committed; if not, bench-warrant to issue.*

SEC. 986. If the defendant is present when the order is made, he must be forthwith committed. If he is not present, a bench-warrant must be issued and proceeded upon in the manner provided in this chapter.

987. *Defendant, on arraignment, to be informed of his right to counsel.*

SEC. 987. If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.

Right to have counsel: Article 6 of the amendments to the constitution of the United States; art. 1, sec. 13, state constitution. In *Rowe* v. *Yuba County*, 17 Cal. 62, approved in *Lamont* v. *Solano County*, 49 Id. 158, it was held "part of the general duty of counsel to render professional services to persons accused of crime who are destitute of means, upon the appointment of the court, when not inconsistent with their obligations to others," and that attorneys who render such services cannot recover any compensation therefor from the county.

The accused ought to be informed of his right to counsel at the commencement of the proceedings of arraignment; yet the arraignment will not be void if he is so informed in the course of the arraignment: *People* v. *Villarino*, 4 West Coast Rep. 693.

988. *Arraignment, how made.*

SEC. 988. The arraignment must be made by the court, or by the clerk or district attorney under its direction, and consists in reading the indictment or information to the defendant and delivering to him a copy thereof, and of the indorsements thereon, including the list of witnesses, and asking him whether

he pleads guilty or not guilty to the indictment or information. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 16 (*Ban. ed.* 162); *took effect immediately.*]

Valid arraignment under this and the next section: See *People* v. *Villarino*, 4 West Coast Rep. 693.

Arraignment for previous conviction may be made under this section since the repeal of sections 969 and 1025: *People* v. *Brooks*, 3 West Coast Rep. 53; *People* v. *Lewis*, 64 Cal. 401.

Arraignment.—Defined by Bouvier to be "calling the defendant to the bar of the court to answer the accusation contained in the indictment:" Bouv. Law Dict., tit. Arraignment. At the common law, the defendant was called to the bar by his name, and directed to hold up his hand. This was done for the purpose of identifying the prisoner as the person named in the indictment. The holding up the hand was a mere ceremony, and is not required at the present time. The defendant simply stands up, and his name is obtained as provided in section 999. Silence or a refusal to speak is alike an admission of the name as his true name, and by it he may be proceeded against. The indictment is then read to the defendant to enable him fully to understand the charge made against him. The reading must be so that he may distinctly hear it, including the indorsements. If the identity of the name is not already determined, it is then done, and a proper record of the proceedings to identify the name made. The officer who reads the indictment, or the court, then addressing the defendant by the name fixed as his true name, who is still standing, says to him: "How say you, A B, are you guilty or not guilty?" 1 Archb. Crim. 330. Whatever the plea of the defendant, it is entered and proceeded upon as provided in sections 1016-1024, *post*. The defendant is entitled to a copy of the indictment or information, but if upon his arraignment he asks for time to plead, he thereby waives any defect in the statutory detail of the proceedings which constitute an arraignment, such as a failure to deliver a copy of the indictment: *People* v. *Lightner*, 49 Cal. 226. There must, however, be an arraignment and plea: *People* v. *Corbett*, 28 Id. 328; *People* v. *Gaines*, 52 Id. 479; *Grigg* v. *People*, 31 Mich. 471; sec. 1016, note. In cases of felony the arraignment must be in person: Sec. 977; but if the offense with which the defendant is charged is only a misdemeanor, the plea may be by counsel: Sec. 1016, note. The defendant does not waive an arraignment and plea by submitting to a trial: *People* v. *Corbett*, 28 Cal. 328; but see *Molihan* v. *State*, 30 Ind. 266; *State* v. *Cassidy*, 12 Kan. 551.

989. *Proceedings on arraignment when defendant is not indicted by his true name.*

SEC. 989. When the defendant is arraigned he must be informed that if the name by which he is prosecuted is not his true name, he must then declare his true name, or be proceeded against by the name in the indictment or information. If he gives no other name, the court may proceed accordingly; but if he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the information or indictment may be had against him by that name, referring also to the name by which he was first charged therein. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 17 (*Ban. ed.* 162); *took effect immediately.*]

Arraignment: See 989, note.
Indictment by wrong name: Secs. 950, note, 953, note.

990. *Time allowed, and how defendant may answer on arraignment.*

SEC. 990. If, on the arraignment, the defendant requires it, he must be allowed a reasonable time, not less than one day, to answer the indictment or information. He may, in answer to the arraignment, move to set aside, demur, or plead to the indictment or information. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 17 (*Ban. ed.* 163); *took effect immediately.*]

CHAPTER II.

SETTING ASIDE THE INDICTMENT.

995. *Indictment or information when set aside on motion.*

SEC. 995. The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases. If it be an indictment:

1. Where it is not found, indorsed, and presented as prescribed in this code;

2. When the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or indorsed thereon;

3. When a person is permitted to be present during the session of the grand jury, and when the charge embraced in the indictment is under consideration, except as provided in section nine hundred and twenty-five;

4. When the defendant had not been held to answer before the finding of the indictment, on any ground which would have been good ground for challenge, either to the panel or to any individual grand juror.

If it be on information:

1. That before the filing thereof the defendant had not been legally committed by a magistrate;

2. That it was not subscribed by the district attorney of the county. [*Amendment, approved April* 26, 1880; *Amendments* 1880, 43 (*Ban. ed.* 521); *took effect from passage.*]

The amendments of April 9, 1880, in this chapter, are to conform to the proceeding by information.

Setting aside indictment or information. The grounds here enumerated are the only ones upon which an indictment or information may be set aside on motion: *People* v. *Southwell*, 46 Cal. 141; *People* v. *Schmidt*, 64 Id. 260. This motion must be made before demurrer or plea, and if not so made, the defendant is precluded from afterwards availing himself of the objections which he is allowed to present on such motion: *People* v. *Freeland*, 6 Id. 98; *People* v. *Lawrence*, 21 Id. 368; *People* v. *Lopez*, 26 Id. 112; *People* v. *King*, 28 Id. 272; *People* v. *Stacey*, 34 Id. 307. The grounds upon which the motion may be based go to matters occurring prior to the finding of the indictment or filing the information, as well as to their presentation and indorsement. The ruling of the lower court, upon a motion to set aside an indictment or information, will not be disturbed where the evidence is conflicting: *People* v. *Ah Chung*, 54 Id. 398. Motion based on insufficiency of affidavit for the warrant of arrest denied: *People* v. *Velarde*, 59 Id. 457.

Indictment—*Where not found, indorsed, and presented, etc.*—In the notes to sections 941, 943, and 944, the manner of finding, indorsing, and presenting indictments is considered. In *People* v. *Southwell*, 46 Cal. 141, it was held, upon motion to set aside an indictment for not being found, etc., as prescribed in this code, that irregularities in selecting, summoning, and impaneling the jury could not be inquired into. So in *People* v. *Colby*, 54 Id. 37, and *People* v. *Hunter*, Id. 65, this ruling was approved, and it was held that the meaning of the phrase "when not found as prescribed in this code," was simply that the indictment must be concurred in by the constitutional number, twelve.

Names of witnesses not indorsed, etc.—Sec. 943, note; see also sec. 869.

Persons present, etc.—By persons "present during the session of the grand jury," is not meant those who constitute the grand jury, impaneled and sworn under the direction of the court: *People* v. *Colby*, 54 Cal. 38.

Defendant not been held to answer, etc. In the notes to sections 895 and 896, the grounds of challenge to the panel of the grand jury, as well as those to individual grand jurors, are considered, and the authorities relating thereto cited. A defendant who has not been held to answer before the grand jury is made up and sworn may, on motion, have an indictment set aside, on any ground which would have been a good ground of challenge to the panel or to any individual grand juror: *People* v. *Colmere*, 23 Cal. 631; *People* v. *Turner*, 39 Id. 370. If he had been held to answer prior to that time, a challenge to the panel or to an individual juror must be interposed before the grand jury is impaneled, or it is waived: Secs. 895, note, 896, note. So a defendant who is under arrest when the grand jury is about to be impaneled, although he has not been held to answer, must, if an opportunity is given to him, exercise his right of challenge, or he will be precluded from taking advantage of such objections, or motion to set aside the indictment found against him, under this subdivision: *People* v. *Geiger*, 49 Cal. 643.

Information—*Legally committed.*—By section 8 of article 1 of the present constitution of this state, it is provided that "offenses heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment," etc. Under this provision, before a person can be prosecuted by information for a public offense, he must have been examined and legally committed by one of the persons named as magistrates in section 808. It is not necessary, however, that the information should aver that the defendant has been so examined and committed: *People* v. *Shubrick*, 57 Cal. 565. If he has not been examined and committed, the information may be set aside on motion under this section upon proof of that fact, by affidavit or otherwise.

Subscribed by district attorney: Sec. 809, note, and cases there cited; also *People* v. *Ah Fook*, 64 Cal. 380.

996. *Defendant waives objections unless he makes the motion.*

SEC. 996. If the motion to set aside the indictment or information is not made, the defendant is precluded from afterwards taking the objections men-

tioned in the last section. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 17 (*Ban. ed.* 163); *took effect immediately.*]

Waiver of objection: See note to last section.

997. *Motion, when heard—If denied or granted, what proceedings are to be had.*

SEC. 997. The motion must be heard at the time it is made, unless for cause the court postpones the hearing to another time. If the motion is denied, the defendant must immediately answer the indictment or information, either by demurring or pleading thereto. If the motion is granted, the court must order that the defendant, if in custody, be discharged therefrom; or if admitted to bail, that his bail be exonerated; or if he has deposited money instead of bail, that the same be refunded to him, unless it directs that the case be resubmitted to the same or another grand jury, or that an information be filed by the district attorney; provided, that after such order of resubmission the defendant may be examined before a magistrate, and discharged or committed by him, as in other cases, if before indictment or information filed he has not been examined and committed by a magistrate. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 17 (*Ban. ed.* 163); *took effect immediately.*]

Resubmission of charge: See sec. 942, and note.
Jeopardy: See sec. 687, and note.

998. *Effect of order for submission.*

SEC. 998. If the court directs the case to be resubmitted, or an information to be filed, the defendant, if already in custody, must so remain, unless he is admitted to bail; or if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment or information; and unless a new indictment is found, or information filed, before the next grand jury of the county is discharged, the court must, on the discharge of such grand jury, make the order prescribed by the preceding section. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 17 (*Ban. ed.* 163); *took effect immediately.*]

The defendant is regarded as still held to answer, and may again challenge the grand jury, as in the first instance.

999. *Order no bar to another prosecution.*

SEC. 999. An order to set aside an indictment or information, as provided in this chapter, is no bar to a future prosecution for the same offense. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 18 (*Ban. ed.* 164); *took effect immediately.*]

Jeopardy: See sec. 687, and note.
Dismissal of an indictment is no bar to another indictment for the same offense: *People* v. *Campbell*, 59 Cal. 243. See also new information filed after previous verdict of not guilty, by reason of variance in the name of the accused: *People* v. *Allen*, Id. 140.

CHAPTER III.

DEMURRER.

1002. *Pleading on part of defendant.*

SEC. 1002. The only pleading on the part of the defendant is either a demurrer or a plea.

1003. *Demurrer or plea, when put in.*

SEC. 1003. Both the demurrer and plea must be put in in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

Arraignment: Sec. 988, note. **Time to plead:** Sec. 990.

1004. *Grounds of demurrer.*

SEC. 1004. The defendant may demur to the indictment or information when it appears upon the face thereof, either:

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county; or if an information, that the court has no jurisdiction of the offense charged therein;

2. That it does not substantially conform to the requirement of sections nine hundred and fifty, nine hundred and fifty-one, and nine hundred and fifty-two;

3. That more than one offense is charged;

4. That the facts stated do not constitute a public offense;

5. That it contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 18 (*Ban. ed.* 164); *took effect immediately.*]

Demurrer to indictment or information. A demurrer upon any of the grounds above enumerated presents the objection to the sufficiency of the indictment or information. It must be in writing, distinctly specifying the grounds of objection, and must be interposed prior to the joinder of issue of fact by plea. Unless so interposed, any of the objections mentioned that appear upon the face of the indictment or information are waived, and cannot be taken advantage of upon the trial or in arrest of judgment; excepting, however, the objection to the jurisdiction of the court, and that a public offense has not been charged, which may be taken advantage of at any time: Secs. 1082, 1185; *People* v. *Josephs*, 7 Cal. 129; *People* v. *Apple*, Id. 289; *People* v. *Shotwell*, 27 Id. 394; *People* v. *Garnett*, 29 Id. 622; *People Jim Ti*, 32 Id. 60; *People* v. *Burgess*, 35 Id. 115; *People* v. *Turner*, 39 Id. 370; *People* v. *Swenson*, 49 Id. 388. A general demurrer to an indictment containing two counts, one of which is sufficient, will be overruled: *People* v. *Ferris*, 56 Id. 442. In *People* v. *Ah Ow*, 39 Id. 604, an order sustaining a demurrer was held to be a final judgment, from which an appeal could be taken; but in *People* v. *Martin*, 47 Id. 112, an order sustaining a demurrer on the ground that the indictment did not charge a felony, but a simple assault, and leaving the case for trial as to the assault, was held not a final judgment from which an appeal would lie. Whether an appeal will lie from an order sustaining a demurrer is considered doubtful: *People* v. *Quong On Long*, 6 Pac. C. L. J. 116. See, as to orders that may be appealed from in criminal cases, secs. 1237, 1238; *People* v. *Clarke*, 42 Cal. 622; *People* v. *Ah Kim*, 44 Id. 384. Where on appeal the record failed to show what disposition the lower court had made of a demurrer interposed by the defendant, it was held that for aught that appeared, it might have been withdrawn, and that, the information appearing good in substance, the judgment would not be disturbed: *People* v. *Clarke*, 7 Pac. C. L. J. 190.

Grounds of demurrer enumerated in the above section are the only grounds upon which a demurrer to an information or indictment will lie: *People* v. *Schmidt*, 64 Cal. 260. Uncertainty is not a ground of demurrer: *People* v. *Markham*, Id. 157.

Subd. 1. Jurisdiction.—An objection to the authority of the grand jury to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county in which the grand jury is impaneled, or to the jurisdiction of the court in which an information has been filed, may be at any time during the progress of the trial, or in arrest of judgment. It is not waived by failure to demur: Sec. 1012; see *People* v. *Mellon*, 40 Cal 648.

Subd. 2. Specific requirements, etc.: See secs. 950, 951, 952, 954, 959, and the notes thereto; see subd. 4.

Subd. 3. Charging more than one offense: See sec. 954, note. See a valuable note to *Ben* v. *State*, 58 Am. Dec. 238-240.

Subd. 4. Facts which constitute public offense: Sec. 959, note. See also the notes under the heads of "Larceny," "Burglary," "Robbery," etc. This objection is not waived by not demurring on the ground that the information does not substantially conform to the requirement of the sections specified in subdivision 2: *People* v. *Nelson*, 58 Cal. 104.

Uncertainty is not one of the statutory grounds of demurrer: *People* v. *Markham*, 64 Cal. 157.

Waiver of objection by not demurring: See sec. 1008.

1005. *Demurrer, how put in and its form.*

SEC. 1005. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment or information, or it must be disregarded. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 18 (*Ban. ed.* 164); *took effect immediately.*]

1006. *When heard.*

SEC. 1006. Upon the demurrer being filed, the argument upon the objections presented thereby must be heard, either immediately or at such time as the court may appoint.

1007. *Judgment on demurrer.*

SEC. 1007. Upon considering the demurrer, the court must give judgment, either allowing or disallowing it, and an order to that effect must be entered upon the minutes.

Order sustaining demurrer, whether appealable.—In *People* v. *Ah Own*, 39 Cal. 604, an order sustaining a demurrer was held to be a final judgment from which an appeal could be taken; but in *People* v. *Martin*, 47 Id. 112, an order sustaining a demurrer, on the ground that the indictment did not charge a felony, but a simple assault, and leaving the case for trial as to the assault, was held not a final judgment from which an appeal would lie. Whether an appeal will lie from such an order is considered doubtful: *People* v. *Quong On Long*, 6 Pac. C. L. J. 116; see sec. 1238.

The entry of the order on the demurrer in the minutes is the judgment; the use of the word "sustained" instead of "allowed" does not render the judgment ineffectual: *People* v. *Jordan*, 4 West Coast Rep. 84.

1008. *If allowed, bar to another prosecution when.*

SEC. 1008. If the demurrer is allowed, the judgment is final upon the indictment or information demurred to, and is a bar to another prosecution for the same offense, unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment or information, directs the case to be submitted to another grand jury, or directs a new information to be filed; provided, that after such order of resubmission the defendant may be examined before a magistrate, and discharged or committed by him, as in other cases. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 18 (*Ban. ed.* 164); *took effect immediately.*]

Jeopardy: Sec. 687, note.
Resubmission of charge: Sec. 942, note.

Section cited and applied: *People* v. *Jordan*, 63 Cal. 219.

1009. *If resubmission not ordered, defendant discharged, etc.*

SEC. 1009. If the court does not permit the information to be amended, nor direct that an information be filed, or that the case be resubmitted, as provided in the preceding section, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 18 (*Ban. ed.* 164); *took effect immediately.*]

1010. *Proceedings, if submission ordered.*

SEC. 1010. If the court directs that the case be resubmitted, the same proceedings must be had thereon as are precribed in sections nine hundred and ninety-seven and nine hundred and ninety-eight.

1011. *Proceedings, if demurrer disallowed.*

SEC. 1011. If the demurrer is disallowed, the court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may direct. If he does not plead, judgment may be pronounced against him.

Refusal to plead, after demurrer overruled.—Where a demurrer is overruled, and the defendant refuses to plead, judgment may be pronounced against him as upon a plea of guilty: *People* v. *King*, 28 Cal. 266; *People* v. *Jocelyn*, 29 Id. 562. No constitutional right of the defendant is violated by the entry of a judgment against him, if he refuses to plead after demurrer overruled: Id.

"If the indictment charges no offense, he is adjudged guilty of none, and it may be taken advantage of in arrest of judgment:" Commissioners' note.

1012. *When objections, forming ground of demurrer, must or may be taken.*

SEC. 1012. When the objections mentioned in section ten hundred and four appear on the face of the indictment or information they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment or information, or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, or after the trial, in arrest of judgment. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 19 (*Ban. ed.* 164); *took effect immediately.*]

Arrest of judgment: Sec. 1185, note.

Objections waived by not demurring.—An objection that the information did not substantially conform to the requirements of sections 950, 951, and 952, cannot be taken on a motion in arrest of judgment. It must be raised by special demurrer: *People* v. *Feilen*, 58 Cal. 218; see also *People* v. *Markham*, 64 Id. 158.

CHAPTER IV.

PLEA.

1016. *The different kinds of pleas.*

SEC. 1016. There are four kinds of pleas to an indictment, or information. A plea of:

1. Guilty;

2. Not guilty;

3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty;

4. Once in jeopardy. [*Amendment, approved April* 26, 1880; *Amendments* 1880, 44 (*Ban. ed.* 521); *took effect from passage.*]

Subd. 4. Once in jeopardy is added by the amendment.

1017. *Pleas, how put in, and form.*

SEC. 1017. Every plea must be oral, and entered upon the minutes of the court in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offense charged."

2. If he plead not guilty: "The defendant pleads that he is not guilty of the offense charged."

3. If he plead a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted) of the offense charged by the judgment of the court of —— (naming it), rendered at —— (naming the place), on the —— day of ——."

4. If he plead once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged (specifying the time, place, and court)." [*Amendment, approved April* 26, 1880; *Amendments* 1880, 44 (*Ban. ed.* 521); *took effect from passage.*]

Plea must be oral.—In criminal cases every plea must be oral and entered in the minutes of the court. It cannot be in writing: *People* v. *Johnson*, 47 Cal 122; *People* v. *Redinger*, 55 Id. 298.

Pleas generally: Sec. 1016, and notes.

Pleading under this section, where previous conviction charged, section 969 having been repealed: See *People* v. *Lewis*, 64 Cal. 401, 403.

Pleas generally.—In all criminal cases there must be an arraignment and plea. Until a plea has been entered, as provided in the next section, there is no issue for the jury to try, and a verdict in a case where there has been neither an arraignment nor plea is a nullity, and no valid judgment can be rendered thereon: *People* v. *Corbett*, 28 Cal. 328; *People* v. *Gaines*, 52 Id. 479; *Douglass* v. *State*, 3 Wis. 820; *State* v. *Saunders*, 53 Mo. 234; *State* v. *Montgomery*, 63 Id. 296. In all cases amounting to a felony the defendant must plead in person: Secs. 1017, 1018; *People* v. *Corbett*, 28 Cal. 328; but see *People* v. *Thompson*, 4 Id. 241. A plea by his attorney for him is a nullity: *McQuillen* v. *State*, 8 Smed. & M. 587; *Younger* v. *State*, 2 W. Va. 579. In cases of misdemeanor the defendant may plead in person or by attorney: *People* v. *Ebner*, 23 Cal. 158; see *People* v. *Budd*, 7 Pac. C. L. J. 486.

Subd. 1. Plea of guilty.—This plea can only be put in by the defendant himself in open court, unless upon indictment against a corporation, in which case it may be put in by counsel: Sec. 1018; *People* v. *Thompson*, 4 Cal. 238; *People* v. *McCrory*, 41 Id. 458. Though no judgment is pronounced upon such a plea, it is a good defense if pleaded to another indictment for the same offense: *People* v. *Goldstein*, 32 Id. 432. In *People* v. *Delany*, 49 Id. 394, the defendant pleaded "guilty of the offense charged in the indictment," and the indictment charged the offense of petit larceny, committed after a previous conviction for petit larceny; the plea was held to confess the offense charged, which included the previous conviction, and that the defendant was properly sentenced for a felony. If a defendant pleads guilty to an indictment which charges an offense which is divided into degrees, the court before passing sentence must ascertain the degree: *People* v. *Jefferson*, 52 Id. 452.

Withdrawing plea: Sec. 1018, notes.

Subd. 2. Plea of not guilty.—This plea puts in issue every material allegation of an indictment: Sec. 1019. If the offense charged amounts to a felony, it is the better practice to have the defendant plead in person; although in *People* v. *Thompson*, 4 Cal. 241, under sections 299 and 301 of the criminal practice act, which are in substance the same as sections 1017 and 1018 of this code, it was held that it is "unnecessary for the prisoner to be present and plead, except in case where he pleads guilty." In that case the defendant was convicted of murder upon a plea of not guilty put in for him by his attorney. Under this plea the insanity of the prisoner at the time of the commission of the offense may be shown: *People* v. *Olwell*, 28 Id. 456. So the fact of drunkenness at the time the crime was committed may be given in evidence under this plea, not as a defense, but to determine the state or condition of the mind, and its capacity to form an intent: *People* v. *King*, 27 Id. 507; sec. 22, note. The prosecution must prove the *locus delicti*, upon a plea of not guilty: *People* v. *Bevans*, 52 Id. 470; sec. 777, note.

Drunkenness: Sec. 22, notes.

Insanity: Sec. 26, subd. 3, and notes.

Evidence under plea of not guilty: Sec. 1020.

Subds. 3, 4. Former jeopardy—Once in jeopardy: See sec. 687, note. Where there is a plea of not guilty and also a plea of former conviction, the defendant is entitled to a verdict on each plea. A verdict of guilty is insufficient: *People* v. *Kinsey*, 51 Cal. 278; *People* v. *Helbing*, 59 Id. 567; *People* v. *Fuqua*, 61 Id. 377. And where the record is silent, showing no finding by the jury upon the plea of former acquittal, the court will not presume that that defense was withdrawn: *People* v. *Fuqua*, *supra*.

The pleas of former acquittal and once in jeopardy may be entered after a new juror had been sworn to take the place of one taken sick during the trial, and before the commencement of the trial anew: *People* v. *Stewart*, 64 Cal. 60.

But cannot be interposed on a new trial ordered by the supreme court upon a reversal for insufficiency of evidence to justify the verdict of guilty: *People* v. *Hardisson*, 61 Cal. 378. Where a judgment of conviction of murder has been reversed on appeal by defendant and remanded for further proceedings, because of a defective information, and the action is dismissed under section 1385, and a new information filed for the same offense, the defendant cannot plead once in jeopardy and former conviction as a bar: *People* v. *Schmidt*, 64 Id. 260.

The murder of two persons by the same act, according to the weight of authority, constitutes two offenses, for each of which a separate prosecution will lie, and a conviction or acquittal in one case does not bar a prosecution in the other. And further, where two persons are directly concerned in the murder of two others at the same time, it does not follow that the murder was accomplished by the same act: *People* v. *Majors*, 2 West Coast Rep. 580.

1018. *Plea of guilty, how put in, and when it may be withdrawn.*

SEC. 1018. A plea of guilty can be put in by the defendant himself only in open court, unless upon indictment or information against a corporation, in which case it may be put in by counsel. The court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 19 (*Ban. ed.* 165); *took effect immediately.*]

Withdrawing plea.—Permitting the defendant to withdraw a plea of not guilty for the purpose of demurring to the indictment, or of moving to set it aside, is a matter vested largely in the discretion of the trial court, and its ruling will not be disturbed unless there has been a manifest abuse of such discretion: *People* v. *Lee*, 17 Cal. 76. When it appears that a plea of guilty has been entered through inadvertence and without due deliberation, or ignorantly, and mainly from the hope that the punishment to which the accused would otherwise be exposed may be mitigated, great indulgence should be shown in permitting such plea to be withdrawn. Refusal to allow the defendant to withdraw his plea of guilty under such circumstances will amount to an abuse of the discretion vested in the trial court: *People* v. *McCrory*, 41 Id. 458. So where there was doubt of the sanity of the accused at the time his plea of guilty was entered, and the court ought to have allowed him to withdraw it and plead not guilty: *People* v. *Scott*, 59 Id. 341. See also *People* v. *Lewis*, 64 Id. 401, where, after a plea of not guilty, the court was held to have properly refused to permit the plea of guilty of prior conviction to be entered. There was no abuse of discretion in the court's allowing defendant to withdraw the plea of not guilty, and to interpose a demurrer and motion to set aside the information: *People* v. *Ah Fook*, Id. 380.

Pleas generally: Sec. 1016, note.

1019. *What plea of not guilty puts in issue.*

SEC. 1019. The plea of not guilty puts in issue every material allegation of the indictment or information. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 19 (*Ban. ed.* 165); *took effect immediately.*]

Plea of not guilty: See sec. 1016 in note. "All matters of fact tending to establish a defense, except a former acquittal or conviction, or once in jeopardy, may be proved under a plea of the general issue:" *People* v. *Ah Lee*, 60 Cal. 85, 86.

1020. *What may be given in evidence under plea of not guilty.*

SEC. 1020. All matters of fact tending to establish a defense, other than that specified in the third and fourth subdivisions of section one thousand and sixteen, may be given in evidence under the plea of not guilty. [*Amendment, approved April* 26, 1880; *Amendments* 1880, 44 (*Ban. ed.* 522); *took effect from passage.*]

Evidence under plea of not guilty.—Section cited and applied: *People* v. *Ah Lee*, 60 Cal. 85; sec. 1016 in note. Evidence of intoxication is admissible in cases of homicide, as going to the intent: *People* v. *Ferris*, 55 Id. 588; and see *People* v. *De la Cour Soto*, 63 Id. 165; *People* v. *Jones*, 64 Id. 168.

1021. *What is not a formal acquittal.*

SEC. 1021. If the defendant was formerly acquitted on the ground of variance between the indictment or information and the proof, or the indictment or information was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense. [*Amendment, approved April* 19, 1880; *Amendments* 1880, 19 (*Ban. ed.* 165); *took effect immediately.*]

Variance between indictment or information and proof.—An acquittal of a defendant because of a variance between the proof and the indictment is no bar to a second indictment, if the variance is such that a conviction was legally impossible upon the first indictment. It being legally impossible to have convicted the defendant, he has never been "in jeopardy:" *People* v. *McNealy*, 17 Cal. 332; see *People* v. *March*, 6 Id. 543. If, however, the variance is immaterial, an acquittal of the defendant, because of such variance, will bar any subsequent prosecution for the same offense. An error of the court in regarding as material a variance between the allegations and proof will not render the acquittal less available and conclusive as a bar to a subsequent prosecution. The question to be determined under the plea of former acquittal is, Would the evidence which is necessary to support the second indictment have been sufficient to procure a legal conviction on the first? If it would, the acquittal is a bar to a subsequent prosecution; and if not, it is no bar: *People* v. *Hughes*, 41 Id. 234. Where the subject of the assault named in the information was charged to be one John Carl, and his real name was John Carlin, the court may, where defendant is acquitted on the ground of variance, direct the district attorney to amend his information. If, however, the court will not so direct, a new information may be filed without the order of court; an appeal by the district attorney effects nothing, and will be dismissed: *People* v. *Allen*, 61 Id. 140. The mere opinion of a judge, that the evidence shows the defendant to be guilty of a higher degree of crime, does not authorize him to discharge the jury without the defendant's consent, and hold the defendant for the higher offense. Such discharge amounts to an acquittal, and the defendant cannot be again tried for that offense: *People* v. *Hunckeler*, 48 Id. 331.

A variance in the name of the insurance company given in an indictment for arson, to defraud, and that as proved is no ground for an arrest of judgment: *People* v. *Hughes*, 29 Cal. 257. Immaterial variance in indictment for forgery, the word "shipped" being spelled "shiped" in the original instrument: *People* v. *Cummings*, 58 Id. 88.

1022. *What is a formal acquittal.*

SEC. 1022. Whenever the defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding any defect in form or substance in the indictment or information on which the trial was had. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 19 (*Ban ed.* 165); *took effect immediately.*]

1023. *Conviction or acquittal on indictment or information for a higher offense.*

SEC. 1023. When the defendant is convicted or acquitted, or has been once placed in jeopardy upon an indictment or information, the conviction, acquittal, or jeopardy is a bar to another indictment or information for the offense charged in the former, or for an attempt to commit the same, or for an offense

necessarily included therein, of which he might have been convicted under that indictment or information. [*Amendment, approved April* 26, 1880; *Amendments* 1880, 44 (*Ban. ed.* 522); *took effect from passage.*]

Jeopardy: Sec. 687, note.

1024. *Defendant refusing to answer, plea of not guilty to be entered.*

SEC. 1024. If the defendant refuses to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 19 (*Ban. ed.* 165); *took effect immediately.*]

Refusal to plead after demurrer overruled: Sec. 1011, note.
Plea of not guilty: Sec. 1016, note.

1025. *Previous convictions.*

Section 1025, relating to previous convictions, was repealed by act of April 9, 1880; Amendments 1880, 19 (Ban. ed. 165); took effect immediately.

The repealed section was as follows: "Sec. 1025. When a defendant, who is charged in the indictment with having suffered a previous conviction, pleads either guilty or not guilty of the offense for which he is indicted, he must be asked whether he has suffered such previous conviction. If he answers that he has, his answer shall be entered by the clerk in the minutes of the court, and shall, unless withdrawn by consent of the court, be conclusive of the fact of his having suffered such previous conviction in all subsequent proceedings. If he answer that he has not, his answer shall be entered by the clerk in the minutes of the court, and the question whether or not he has suffered such previous conviction shall be tried by the jury which tries the issue upon the plea of 'not guilty,' or in case of a plea of 'guilty,' by a jury impaneled for that purpose. The refusal of the defendant to answer is equivalent to a denial that he has suffered such previous conviction. In case the defendant pleads 'not guilty,' and answers that he has suffered the previous conviction, the charge of the previous conviction shall not be read to the jury, nor alluded to on the trial. [New section, approved March 30, 1874; Amendments 1873–4, 439; took effect July 1, 1874.]"

See discussion of this section, and of the effect of its repeal, in *People* v. *Johnson*, 55 Cal. 571, 572; *People* v. *Lewis*, 64 Id. 401; *People* v. *Brooks*, 3 West Coast Rep. 53; *People* v. *King*, 64 Cal. 338; see also sec. 969.

CHAPTER V.

TRANSMISSION OF CERTAIN INDICTMENTS FROM THE COUNTY COURT TO THE DISTRICT COURT OR MUNICIPAL CRIMINAL COURT OF SAN FRANCISCO.

1028. *Transmitting indictments.*

Section 1028, relating to the transmission of certain indictments from the county to the district court was repealed by act of March 12, 1880; Amendments 1880, 6 (Ban. ed. 27); took effect from passage.

1029. *Indictments against a judge of the superior court, certificate of facts to be transmitted to governor.*

SEC. 1029. When an indictment is found or an information filed in a superior court against a judge thereof, a certificate of that fact must be transmitted by the clerk to the governor, who shall thereupon designate and direct a judge of the superior court of another county to preside at the trial of such indictment or information, and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment. [*Amendment, approved March* 12, 1880; *Amendments* 1880, 6 (*Ban. ed.* 27); *took effect immediately.*]

1030. *Transmitting indictments to municipal criminal court of San Francisco.*

Section 1030, relating to the transmission of certain indictments to the municipal criminal court of San Francisco, was repealed by act of March 12, 1880; Amendments 1880, 6 (Ban. ed. 27); took effect from passage.

CHAPTER VI.

REMOVAL OF THE ACTION BEFORE TRIAL.

1033. *When action may be removed.*

SEC. 1033. A criminal action may be removed from the court in which it is pending, on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the action is pending. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 19 (*Ban. ed.* 165); *took effect immediately.*]

Change of venue in criminal cases.—Section 397 of the Code of Civil Procedure, providing for the change of the place of trial in civil actions, has no application to criminal cases. The only provisions of law providing for a removal of such cases from one county to another for trial are found in the Penal Code, sections 1033–1038, inclusive. The only ground upon which a removal may be granted is that provided for in section 1033; viz., "that a fair and impartial trial cannot be had in the county where the action is pending." By this is meant that a fair and impartial jury cannot be obtained in that county: *People* v. *McGarvey*, 56 Cal. 327. A judge who is disqualified from trying a criminal case, on account of having been attorney for defendant, cannot change the venue of such case on that ground: Id. Neither does bias or prejudice on the part of the judge who is to try the case furnish any grounds to authorize a change: *People* v. *Williams*, 24 Id. 31; *People* v. *Shuler*, 28 Id. 490; *People* v. *Mahoney*, 18 Id. 185. The allowance or refusal of a motion to change the venue in a criminal case is largely discretionary in the trial court: *People* v. *Fisher*, 6 Id. 154; *People* v. *Mahoney*, 18 Id. 180; *People* v. *Congleton*, 44 Id. 92; *People* v. *Purdue*, 49 Id. 425; *People* v. *Yoakum*, 53 Id. 566. Such motion is addressed to a sound judicial discretion, to be disposed of in furtherance of substantial justice, and an order refusing a change will not be reviewed on appeal, except in cases of gross abuse of discretion: *People* v. *Fisher*, 6 Id. 154; *People* v. *Congleton*, 44 Id. 92. The decision of the trial court denying a change of venue must be warranted by the facts disclosed by the record, if not, it will be reversed: *People* v. *Yoakum*, 53 Id. 566. A motion for a change of venue after the jury has been impaneled comes too late: *People* v. *Cotta*, 49 Id. 166.

1034. *Application for removal, how made.*

SEC. 1034. The application must be made in open court, and in writing, verified by the affidavit of the defendant, a copy of which must be served on the district attorney at least one day before the application is made. Whenever the affidavit shows that the defendant cannot safely appear in person to make the application, because the popular excitement against him is so great as to endanger his personal safety, and such statement is sustained by other testimony, the application may be made by counsel, and heard and determined in the absence of the defendant, though he is indicted for felony, and has not at the time of such application been arrested, or given bail, or been arraigned, or pleaded or demurred to the indictment.

Affidavits upon motion to change, sufficiency of.—Affidavits upon a motion for a change of venue must state facts and circumstances from which the court may deduce the conclusion that a fair and impartial trial cannot be had. Such conclusion is to be drawn by the court, and not by the defendant and his witnesses, and the court must be satisfied from the facts and circumstances positively sworn to in the affidavits, and not from the general conclusion to which the defendant may swear, or which his witnesses may depose they verily believe to be true: *People* v. *Fisher*, 6 Cal. 154; *People* v. *Yoakum*, 53 Id. 566. An affidavit that a jury cannot be selected from a certain portion of the county is insufficient: *People* v. *Baker*, 1 Id. 403. Nor is the affidavit of defendant alone sufficient: *People* v. *Mahoney*, 18 Id. 180; *People* v. *Graham*, 21 Id. 261. A statement generally that the people of the county are prejudiced against the defendant will not be sufficient: *People* v. *Shuler*, 28 Id. 490. Nor is it sufficient that thirty or forty persons contributed to pay counsel to assist the district attorney, to show such general prejudice as to require a change of venue: *People* v. *Graham*, 21 Id. 261; *People* v. *Lee*, 5 Id. 353. Mere belief or opinion of the persons who make the affidavits in support of such a motion that the defendant cannot have a fair trial owing to the popular prejudice against him is not sufficient: *People* v. *Congleton*, 44 Id. 95; see *People* v. *Perdue*, 49 Id. 425. The consideration of such a motion may be postponed until an attempt has been made to impanel a jury: *People* v. *Plummer*, 9 Id. 298. The legislature may consent to a change of venue on behalf of the state, when applied for by the defendant: *People ex rel. Smith* v. *Twelfth District Judge*, 17 Id. 547.

1035. *Application, when granted.*

SEC. 1035. If the court is satisfied that the representation of the defendant is true, an order must be made for the removal of the action to the proper court of a county free from a like objection.

Stats. 1863, 158, sec. 14.

1036. *Order of removal.*

SEC. 1036. The order of removal must be entered upon the minutes, and the clerk must immediately make out and transmit to the court to which the action is removed a certified copy of the order of removal, record, pleadings, and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses.

1037. *Proceedings on removal, if defendant is in custody.*

SEC. 1037. If the defendant is in custody, the order must direct his removal, and he must be forthwith removed by the sheriff of the county where he is imprisoned, to the custody of the sheriff of the county to which the action is removed.

1038. *Authority of court to which action is removed.*

SEC. 1038. The court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed must at any time, upon application of the district attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

Second arraignment, when venue is changed.—Where a defendant has been once arraigned, and subsequently the place of trial is changed, it is unnecessary to repeat the arraignment: *Davis* v. *State*, 39 Md. 384.

CHAPTER VII.

THE MODE OF TRIAL.

1041. *Issue of fact defined.*

SEC. 1041. An issue of fact arises:

1. Upon a plea of not guilty;
2. Upon a plea of a former conviction or acquittal of the same offense;
3. Upon a plea of once in jeopardy. [*Amendment, approved April* 26, 1880; *Amendments* 1880, 45 (*Ban. ed.* 522); *took effect from passage.*]

1042. *Issue of fact, how tried.*

SEC. 1042. Issues of fact must be tried by jury, unless a trial by jury be waived in criminal cases not amounting to felony, by the consent of both parties expressed in open court and entered in its minutes. In cases of misdemeanor the jury may consist of twelve, or any number less than twelve upon which the parties may agree in open court. [*Amendment, approved February* 25, 1880; *Amendments* 1880, 4 (*Ban. ed.* 9); *took effect immediately.*]

Trial by jury.—In all criminal cases amounting to a felony there must be a trial by a jury of twelve men. The defendant cannot consent to be tried by a less number: Const., art. 1, sec. 7; *People* v. *Scoggins*, 37 Cal. 676; *People* v. *Russell*, 46 Id. 121; *People* v. *O'Neil*, 48 Id. 257. In cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court: Const., art. 2, sec. 7. The action of a police magistrate in committing a minor child to an industrial school for his training and reformation is not a criminal prosecution which entitles such minor to a jury trial: *Ex parte Ah Peen*, 51 Cal. 280. Aliens accused of crime are not entitled to be tried by a jury composed of one half aliens: *People* v. *Chin Mook Sow*, Id. 597.

Issue of fact defined: Code Civ. Proc., sec. 590.

1043. *When presence of defendant is necessary on the trial.*

SEC. 1043. If the prosecution be for a felony, the defendant must be personally present at the trial; but if for misdemeanor, the trial may be had in the absence of the defendant; if, however, his presence is necessary for the purpose of identification, the court may, upon application of the district attorney by an order or warrant, require the personal attendance of the defendant at the trial. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 19 (*Ban. ed.* 165); *took effect immediately.*]

Personal attendance at trial.—In all cases amounting to a felony the defendant must be personally present during the whole of his trial: *People* v. *Kohler*, 5 Cal. 72; *People* v. *Higgins*, 59 Id. 357. If, pending a trial for grand larceny, the defendant flees and cannot be found, the jury may be discharged and no jeopardy attaches: Id. During the progress of the trial the defendant is in the custody of the court and under the immediate control of and subject to the orders of the court: *People* v. *Harrington*, 42 Id. 168. Viewing the premises, by the jury, where the offense is alleged to have been committed is not a portion of the trial at which the defendant must be present: *People* v. *Bonney*, 19 Id. 426. The mere fact that the record on appeal recites that the defendant was absent during a portion of the trial (for murder) is not sufficient to justify a reversal of the judgment: *People* v. *Bealoba*, 17 Id. 389. The defendant must be present when the verdict is rendered, and the court, in all trials for felonies, should promptly order him into actual custody at the commencement of the trial, or immediately upon the retirement of the jury to consider their verdict, regardless of his previous admission to bail: *People* v. *Beauchamp*, 49 Id. 41. On the trial of misdemeanors the defendant need not be present, either personally or by attorney: *People* v. *Ebner*, 23 Id. 159; *People* v. *Budd*, 57 Id. 349; *Warren* v. *State*, 19 Ark. 214; *State* v. *Reckards*, 21 Minn. 47.

CHAPTER VIII.

FORMATION OF THE TRIAL JURY AND THE CALENDAR OF ISSUES FOR TRIAL.

1046. *Formation of trial jury.*

SEC. 1046. Trial juries for criminal actions are formed in the same manner as trial juries in civil actions.

Forming juries in criminal actions.—The object of this section is to adopt the same general plan in forming juries in criminal actions as prevails in civil actions subject to such modifications as may be made by other sections of this code: *People* v. *Scoggins*, 37 Cal. 676.

Impaneling trial juries: Secs. 246, 247, Code Civ. Proc.

Formation of jury: Secs. 600–604, Code Civ. Proc.

Qualifications and exemptions of jurors: Secs. 198–201, Code Civ. Proc.

1047. *Clerk to prepare a calendar.*

SEC. 1047. The clerk must keep a calendar of all criminal actions pending in the court, enumerating them according to the date of the filing of the indictment or information, specifying opposite the title of each action whether it is for a felony or a misdemeanor, and whether the defendant is in custody or on bail. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 20 (*Ban. ed.* 166); *took effect immediately.*]

1048. *Order of disposing of issues on the calendar.*

SEC. 1048. The issues on the calendar must be disposed of in the following order, unless for good cause the court shall direct an action to be tried out of its order:

1. Prosecutions for felony, when the defendant is in custody;
2. Prosecutions for misdemeanor, when the defendant is in custody;
3. Prosecutions for felony, when the defendant is on bail;
4. Prosecutions for misdemeanor, when the defendant is on bail. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 20 (*Ban. ed.* 166); *took effect immediately.*]

1049. *Defendant entitled to two days to prepare for trial.*

SEC. 1049. After his plea, the defendant is entitled to at least two days to prepare for trial.

CHAPTER IX.

POSTPONEMENT OF THE TRIAL.

1052. *Postponement, when and how ordered.*

SEC. 1052. When an action is called for trial, or at any time previous thereto, the court may, upon sufficient cause, direct the trial to be postponed to another day. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 20 (*Ban. ed.* 166); *took effect immediately.*]

The amendment omitted, after the word "day," "of the same or next term."

Continuance, granting or refusing discretionary.—"'Postponed' is here, and in fact throughout the codes, used in the place of 'continued,' and 'postponement' for 'continuance:'" Commissioners' note.

Applications for the postponement of the trial of an action are addressed largely to the discretion of the trial court, and its decision upon such motion will not be disturbed on appeal, unless there has been a gross abuse of such discretion: *People* v. *Gaunt*, 23 Cal. 157; *People* v. *Williams*, 24 Id. 31; *People* v. *Jocelyn*, 29 Id. 562. If the facts show the application to be made in bad faith, the court is justified in denying the motion: *People* v. *Mortimer*, 46 Id. 114.

Affidavits, what must contain.—When a motion for a continuance is made on the ground of the absence of a material witness, it should appear by affidavit that the testimony of such witness is not cumulative, and that the facts sought to be proved by him cannot be proved by any other witness within the reach of the process of the court; that his testimony is material, and that due diligence has been used to obtain it, setting forth the character of the diligence that has been used, whether by exhausting the process of the court, or otherwise. The facts which such witness will testify to should also be set out, to enable the court to judge of their materiality: *People* v. *Baker*, 1 Cal. 403; *People* v. *Thompson*, 4 Id. 241; *People* v. *Diaz*, 6 Id. 248; *People* v. *Quincy*, 8 Id. 89; *People* v. *Gaunt*, 23 Id. 156; *People* v. *Williams*, 24 Id. 31; *People* v. *Jocelyn*, 29 Id. 562; *People* v. *Francis*, 38 Id. 183; *People* v. *Mellon*, 40 Id. 648; *People* v. *Ashnauer*, 47 Id. 98; *People* v. *Ah Fat*, 48 Id. 63. That due diligence to procure the attendance of the witness has been used, see *People* v. *Jenkins*, 56 Id. 4. Facts also should be set out from which the court can judge whether there is reasonable ground to believe that the attendance of the absent witness or his testimony can be procured at a future day: *People* v. *Francis*, *supra*, *People* v. *Ashnauer*, *supra*; *People* v. *Ah Fat*, *supra*. It should also appear that the absent witness cannot be readily reached by attachment: *People* v. *Weaver*, 47 Id. 106. If the testimony of the absent witness would be no defense to the action, the motion should be denied: *People* v. *Williams*, 43 Id. 344. On motion for a new trial on the ground of error in denying a motion for a continuance, the affidavits of the absent witnesses should be obtained showing that they will testify to the facts sought to be proved, or good reason should be shown for not obtaining such affidavits: *People* v. *De Lacey*, 28 Id. 589; *People* v. *Jocelyn*, 29 Id. 562. For a sufficient affidavit for continuance by the district attorney, see *People* v. *Gannon*, 61 Id. 476.

Counsel, sickness of, sufficient ground for a continuance: *People* v. *Logan*, 4 Cal. 188; see *Lightner* v. *Menzel*, 35 Id. 452.

Absence of witness for the defense is not sufficient ground for a continuance, when that which is expected to be proved by him is admitted by the district attorney, and where the witness is produced at the trial: *People* v. *Brown*, 59 Cal. 345.

In criminal actions, it is the policy of the law to allow the defendant to have his witnesses personally present at the trial, if they can be obtained without unreasonable delay, and a motion on his part for a continuance on account of absent witnesses, it appearing that their testimony is material, and that due diligence has been used to obtain it, but without success, should be granted, particularly if it be the first application: *People* v. *Diaz*, 6 Cal. 248; *People* v. *Dodge*, 28 Id. 445; *People* v. *McCrory*, 41 Id. 458.

So a continuance was properly refused where it did not seem that the attendance of the alleged absent witness could have been procured in a reasonable time: *People* v. *Lewis*, 64 Cal. 401; citing *People* v. *Cleveland*, 49 Id. 580; *People* v. *Ah Yute*, 53 Id. 613.

TITLE VII.

OF PROCEEDINGS AFTER THE COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT.

CHAPTER I. CHALLENGING THE JURY 1055
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CHAPTER I.

CHALLENGING THE JURY.

1055. *Definition and division of challenges.*

SEC. 1055. A challenge is an objection made to the trial jurors, and is of two kinds:

1. To the panel;
2. To an individual juror.

Challenge, what constitutes.—A defendant exercising his right to challenge is bound to designate, in some way, the objection upon which he intends to rely. He is not permitted to interpose a challenge of such an indefinite character that it cannot be ascertained upon what particular ground it is taken. Unless the cause be alleged, the challenge may be disregarded by the court: *People* v. *Renfrow*, 41 Cal. 37; *People* v. *Dick*, 37 Id. 277; *People* v. *Reynolds*, 16 Id. 128.

Court may excuse jurors.—The court may of its own motion, for any good reason, excuse a qualified juror from sitting on the panel in a criminal case; and this will not be error, if the defendant is tried by a jury of lawful men. The defendant is entitled to a lawful jury, but is not entitled, as a matter of absolute right, to have the first juror who is called, and who possesses all the statutory qualifications, sit in his case: *People* v. *Arceo*, 32 Cal. 40.

1056. *Defendants cannot sever in challenges.*

SEC. 1056. When several defendants are tried together they cannot sever their challenges, but must join therein.

Defendants tried jointly: See *People* v. *McCalla*, 8 Cal. 301.

1057. *Panel defined.*

SEC. 1057. The panel is a list of jurors returned by a sheriff, to serve at a particular court or for the trial of a particular action.

Selecting and returning jurors: Code Civ. Proc., secs. 204–211.
Drawing jurors: Code Civ. Proc., 214–220.
Summoning jurors: Code Civ. Proc., 225–228.

1058. *Challenge to the jury defined.*

SEC. 1058. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

1059. *Upon what founded.*

SEC. 1059. A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury in civil actions, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.

Challenge to the panel.—On the trial of a challenge to the panel the defendant cannot offer his *ex parte* affidavit in support of the challenge: *People* v. *Brown*, 48 Cal. 253. Where but twenty-seven jurors, of thirty-six ordered to be summoned on a special *venire*, appeared, and the court caused the names of these twenty-seven to be placed in the box, it

was held not to be a ground of challenge by defendant to the panel that the names of the jurors who did not appear were omitted from the box: *People* v. *Stuart*, 4 Id. 218. Nor is it a good ground of challenge that the *venire* is special, and that there was no general *venire* drawn: *People* v. *Vance*, 21 Id. 400; *People* v. *Stuart*, *supra*. There is but one ground of challenge to a special *venire*, and that is specified in section 1064; *People* v. *Welch*, 49 Id. 174; see also *People* v. *Ah Chung*, 54 Id. 398; *People* v. *Rodriguez*, 10 Id. 50.

Challenge to panel properly disallowed: *People* v. *Ah Fook*, 64 Cal. 379, 382; *People* v. *Darr*, 61 Id. 554.

"Challenges to the panel were formerly challenges to the array: 1. Principal challenge to the array; 2. Challenge to the array for favor; of which, see Am. Crim. L., 3 Whart., pp. 425, 426, secs. 2947–2953, and notes. The statutory challenge to the panel is based on a departure from the statute providing for the drawing, or an omission to summon the jury as required: See note to sec. 1046, *ante:*" Commissioners' note.

1060. *When and how taken.*

SEC. 1060. A challenge to the panel must be taken before a juror is sworn, and must be in writing or be noted by the phonographic reporter, and must plainly and distinctly state the facts constituting the ground of challenge.

Specifying grounds.—A challenge to a panel of jurors summoned from the by-standers was properly disallowed, it not being based upon any ground specified in the code, in *People* v. *Darr*, 61 Cal. 554.

1061. *If sufficiency of challenge denied, adverse party may except—Exception.*

SEC. 1061. If the sufficiency of the facts alleged as ground of the challenge is denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered on the minutes of the court, or of the phonographic reporter, and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

Compare with section 1077.
Exception to ruling: Sec. 1170.

1062. *If exception overruled, court may allow denial, etc.*

SEC. 1062. If, on the exception, the court finds the challenge sufficient, it may, if justice requires it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception is allowed, the court may, in like manner, permit an amendment of the challenge.

Amended challenge.—Where an amended challenge to the panel is allowed, it becomes a substitute for the original: *People* v. *Brown*, 48 Cal. 253.

1063. *Denial of challenge, how made, and trial thereof.*

SEC. 1063. If the challenge is denied, the denial may be oral, and must be entered on the minutes of the court, or of the phonographic reporter, and the court must proceed to try the question of fact; and upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

Evidence on trial of challenge.—A witness cannot substitute his *ex parte* affidavit for an oral examination and cross-examination; nor can a defendant, by incorporating his own affidavit into his statement of the grounds of a challenge, make it evidence of the facts averred in the statement. The challenge is the pleading; its averments must be proved by legal evidence: *People* v. *Brown*, 48 Cal. 256.

1064. *Challenge when jury summoned but not drawn, for bias in summoning officer.*

SEC. 1064. When the panel is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the same manner, as if made to a juror.

Challenge sufficient, when.—Where the sheriff who summoned the special panel is sworn and examined, and by his testimony discloses that he has formed or expressed an opinion that defendant is guilty, the challenge to the panel on the ground of the bias of the sheriff should be allowed: *People* v. *Coyodo*, 40 Cal. 592; see also *People* v. *Welch*, 49 Id. 174; *People* v. *Rodriguez*. 10 Id. 50.

1065. *If challenge allowed, jury to be discharged; if disallowed, to be impaneled.*

SEC. 1065. If, either upon an exception to the challenge or a denial of the facts, the challenge is allowed, the court must discharge the jury so far as the trial in question is concerned. If it is disallowed, the court must direct the jury to be impaneled. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 20 (*Ban. ed.* 166); *took effect immediately.*]

1066. *Defendant to be informed of his right to challenge individual jurors.*

SEC. 1066. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intends to challenge an individual juror he must do so when the juror appears, and before he is sworn.

"**The object of this provision of the law** is to protect the rights of the defendant in the matter of challenging jurors. He should be informed of the fact that if he desires to challenge any particular juror, he must exercise that right before the juror is sworn; but it appears from the record in this case that the defendant's rights in this respect were fully understood by him and his counsel, and the privilege of challenging jurors was exercised to a large extent in the case. It is true that the court omitted a duty imposed by law, but it clearly appears that the defendant was not in any manner prejudiced by the error complained of, and such being the case, the omission of the court in the matter referred to constitutes no sufficient ground for reversing the judgment:" *People* v. *Mortier*, 58 Cal. 262, 266.

1067. *Kinds of challenges to individual juror.*

SEC. 1067. A challenge to an individual juror is either:

1. Peremptory; or,
2. For cause.

1068. *Challenge, when taken.*

SEC. 1068. It must be taken when the juror appears, and before he is sworn to try the cause; but the court may for cause permit it to be taken after the juror is sworn, and before the jury is completed.

Challenge, when taken.—Defendant has a right to interpose a peremptory challenge to a juror at any time after his name is drawn, and before he is sworn to try the cause: *People* v. *Ah You*, 47 Cal. 121. And the court has no power to adopt a rule compelling a defendant to interpose his peremptory challenges at any particular time: *People* v. *Jenks*, 24 Id. 11. The court, in the exercise of sound discretion, may allow the prosecution to interpose a peremptory challenge to a juror after he has been accepted and before he is sworn to try the cause: *People* v. *Montgomery*, 53 Id. 576. It is not error to refuse permission to defendant to interpose a peremptory challenge to a juror after he has been sworn to try the case, no cause being shown: *People* v. *Rodriguez*, 10 Id. 50. The defendant has not the right to have twelve jurors in the box before he is required to exercise his right to challenge, peremptorily or for cause: *People* v. *Iams*, 57 Id. 115; *People* v. *Russell*, 46 Id. 121; *People* v. *Scoggins*, 37 Id. 676; and see next paragraph.

Order of challenges.—In *People* v. *Scoggins*, 37 Cal. 676, the court said: "In a civil action each party has the whole twelve before exercising his right of peremptory challenge as to any; and if some are excused for cause, the deficiency must be supplied with other names, who may in like manner be examined, until there shall be found in the box twelve men whom the court shall adjudge to be competent and qualified jurors, and thereupon each may exercise his right of peremptory challenge; but neither can be required to exercise it prior to this stage of the proceeding. The theory of the law probably is that the right to challenge peremptorily cannot be exercised so judiciously until the panel is filled with competent and qualified jurors, of whom each party is allowed to reject a certain number without assigning any reason therefor. But while this is the rule in civil actions, it is slightly varied in criminal actions by section 341 of the criminal practice act. Twelve names must be drawn, as in a civil action, and the defendant may examine the whole twelve before exercising the right of peremptory challenge as to any, and those not challenged or excused must then be sworn to try the issue; after which as many more names as will make up the deficiency must be drawn from the box, when the same process will be repeated until the jury is complete. In a civil action, none are to be sworn until the jury is complete, and the peremptory challenge may be made at any time before the jury is sworn to try the issue; but under section 341, in a criminal action, those not challenged or excused must be sworn at the time; and the same process must be repeated until the jury is complete. If, however, the party has omitted to make his challenge before a juror is sworn, 'the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed.' After the whole twelve are sworn and the jury is complete, no further challenge is permissible, even with leave of the court. This variance between the methods of selecting juries in criminal and civil actions was probably dictated by the supposed necessity of placing the jurors in a criminal action under the control of the court during the process of forming the jury. . . . . In order to avoid all misconstruction on this

important point in practice, we repeat that in a criminal action twelve names must be drawn from the jury-box, and the defendant may examine each separately, and exhaust his challenges for cause before challenging any one peremptorily. If he should accept, say six, and challenge six, those accepted must then be sworn, and six additional names must be drawn and presented for examination, with which the same process should be repeated, and so continued until the jury is complete." This was also held to be the rule in *People* v. *Russell*, 46 Cal. 121; *People* v. *Iams*, 57 Id. 115, 125.

1069. *Peremptory challenge, what and how taken.*

SEC. 1069. A peremptory challenge can be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him.

Peremptory challenges: Sec. 1068, note; *People* v. *Weil*, 40 Cal. 268; *People* v. *Jenks*, 24 Id. 11; *People* v. *Reynolds*, 16 Id. 128; *People* v. *Kohle*, 4 Id. 198.

Using information gained on trial of challenge for bias. — While a defendant "may, when the opportunity to interpose a peremptory challenge arises, have the benefit of any information acquired during the trial of a challenge for implied or actual bias, he cannot embark in a general exploration for the sole purpose of satisfying himself whether it will be safe to be tried by a juror against whom no legal objection can be urged:" *People* v. *Hamilton*, 62 Cal. 377, 383. The law gives the defendant the benefit of any knowledge obtained after a trial of the issue of bias, "but does not afford him an opportunity to examine a juror for the avowed object of determining whether he will challenge him peremptorily:" Id. 382. The earlier case of *Watson* v. *Whitney*, 23 Id. 379, declaring otherwise, is not followed; and *People* v. *Car Soy*, 57 Id. 102, is distinguished from the case before the court.

1070. *Number of peremptory challenges.*

SEC. 1070. If the offense charged be punishable with death, or with imprisonment in the state prison for life, the defendant is entitled to twenty and the state to ten peremptory challenges. On a trial for any other offense, the defendant is entitled to ten and the state to five peremptory challenges. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 441; *took effect July* 1, 1874.]

Twenty peremptory challenges: *People* v. *Hamilton*, 62 Cal. 377. In *People* v. *Clough*, 59 Id. 438, 441, a prosecution for robbery, the defendant claimed the right to twenty peremptory challenges. The contention was that robbery might be punished by imprisonment for life, and therefore twenty peremptory challenges ought to be allowed. "The section in question," say the supreme court, "has never received a judicial interpretation, and the point is a new one. We are called upon to decide it without precedent or authority to aid us." After quoting the section, they continue: "Such is the language of the section now under consideration. We have reached the conclusion that it is only in capital cases, or cases in which a life sentence is in terms affixed by the legislature as the punishment of the crime, that the defendant is entitled to twenty peremptory challenges. Robbery is not such a crime. It is true that the maximum punishment is not designated by the statute, but the minimum is, and that need not be for a longer time than one year." The ruling of the lower court was therefore affirmed.

In the later case of *People* v. *Harris*, 61 Cal. 136, a prosecution for robbery, where the information charged a previous conviction of a similar crime, the defendant was held entitled to twenty peremptory challenges, the punishment being in terms imprisonment for life.

1071. *Definition and kinds of challenge for cause.*

SEC. 1071. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either:

1. General—that the juror is disqualified from serving in any case; or,
2. Particular—that he is disqualified from serving in the action on trial.

1072. *General causes of challenge.*

SEC. 1072. General causes of challenge are:

1. A conviction of felony;
2. A want of any of the qualifications prescribed by law to render a person a competent juror;
3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

Qualifications required of jurors: Code Civ. Proc., sec. 198; see Const., art. 20, sec. 11. The fact that the names of two of the jurors is not on the assessment roll for the previous year constitutes no ground for reversal: *People* v. *Mortier*, 58 Cal. 262, citing *People* v. *Sanford*, 43 Id. 29; *People* v. *Chung Lit*, 17 Id. 320.

Exemptions: Code Civ. Proc., sec. 200.

Challenge, what constitutes: Sec. 1055, note.

1073. *Particular causes of challenge.*

SEC. 1073. Particular causes of challenge are of two kinds:

1. For such a bias as, when the existence of the facts is ascertained, in the judgment of law disqualifies the juror, and which is known in this code as implied bias;

2. For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party, which is known in this code as actual bias. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 441; *took effect July* 1, 1874.]

Implied bias: Sec. 1074.

Actual bias: Sec. 1076.

Challenge, how taken.—A challenge must state the specific grounds upon which it is taken; otherwise it will be disregarded. A challenge which merely states that "the juror is challenged for cause," "for actual bias," or "for implied bias," is no challenge: *People* v. *Cotta*, 49 Cal. 166; *People* v. *Buckley*, Id. 241; *People* v. *Walsh*, 43 Id. 447; *People* v. *McGungill*, 41 Id. 429; *People* v. *Hardin*, 37 Id. 258; *People* v. *Dick*, Id. 277; *People* v. *Reynolds*, 16 Id. 128. "I challenge the juror," is not sufficient: *People* v. *Cochran*, 61 Id. 548. Upon the examination of a juror who has stated that he has formed a qualified opinion as to the guilt or innocence of the defendant, the juror cannot, in the absence of a challenge for actual bias, be asked whether he believes the defendant to be guilty or not guilty. Upon a challenge for actual bias such a question might properly be asked as tending to show an existence of actual bias: *People* v. *Hamilton*, 62 Id. 377. In this decision the early cases of *People* v. *Williams*, 6 Id. 206, and *People* v. *Backus*, 5 Id. 277, are explained.

1074. *Grounds of challenge for implied bias.*

SEC. 1074. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant;

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages;

3. Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution;

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information;

5. Having served on a trial jury which has tried another person for the offense charged;

6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it:

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense;

8. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 20 (*Ban. ed.* 166); *took effect immediately.*]

Challenge, how taken: Sec. 1073, note.

Formed or expressed an unqualified opinion.—Prior to the amendment of section 1074, adopted in 1874, the section included, as an additional ground of challenge for implied bias, the following: "Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged.

This ground of challenge, however, no longer exists, *People* v. *Brown*, 59 Cal. 345, 355; *People* v. *Hamilton*, 62 Id. 377, though it is in part supplied by the provisions of sections 1073 and 1076, relating to challenges for actual bias. No exception can be taken, however, to an order allowing or disallowing a challenge to a juror for actual bias—the only exception that can be reserved being to rulings admitting or rejecting evidence on the trial of such challenge: Sec. 1170. It would seem that, on appeal, the only question that will be considered, where a challege for actual bias has been taken, is whether or not the trial court erred in admitting or rejecting testimony on the trial of the challenge, and that the decision of the trial court on the question of the fitness of the juror to serve—a question of fact—will not be reviewed. And unless an exception is taken to the ruling of the court in admitting or rejecting evidence, a challenge to a juror for actual bias will not be considered at all by the supreme court: *People* v. *Cotta*, 49 Cal. 166; *People* v. *Vasquez*, Id. 560; *People* v. *Taing*, 53 Id. 602. Prior to this amendment, the most common ground of challenge for implied bias was "that the juror had formed or expressed an unqualified opinion" on the merits of the case, and the ruling of the trial court disallowing such challenge was subject to direct review by the supreme court: See *People* v. *Brown*, 48 Id. 253; *People* v. *Brotherton*, 47 Id. 388; *People* *Brotherton*, 43 Id. 530; *People* v. *Edwards*, 41 Id. 640; *People* v. *Weil*, 40 Id. 268; *People* v. *King*, 27 Id. 507; *People* v. *Symonds*, 22 Id. 348; *People* v. *Mahoney*, 18 Id. 180; *People* v. *Reynolds*, 16 Id. 128; *People* v. *Cottle*, 6 Id. 227.

Consult *People* v. *Hamilton*, 62 Cal. 377, for the proper practice in regard to examination and challenge of jurors, to fishing examinations with a view to peremptory challenges, and the like.

Defendant to exhaust all peremptory challenges.—The ruling of the court disallowing a challenge to a juror for implied bias, after which the defendant challenges the juror peremptorily, will not be reviewed, unless it appears from the record that defendant exhausted all his peremptory challenges before a jury was secured: *People* v. *McGungill*, 41 Cal. 429; *People* v. *Gatewood*, 20 Id. 149; *People* v. *Gaunt*, 23 Id. 156. But if defendant exhausts all his peremptory challenges, the ruling of the court will be reviewed on appeal: *People* v. *Weil*, 40 Id. 268.

Conscientious opinions.—A juror who has such conscientious opinions as would preclude him from finding the defendant guilty in a capital case, upon circumstantial evidence, is not competent if challenged: *People* v. *Ah Chung*, 54 Cal. 401.

1075. *Exemption not a ground of challenge.*

SEC. 1075. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

Exemption from service—Privilege of the party.—A party who accepts a juror, knowing him to be disqualified, is estopped from afterwards availing himself of such disqualification: *People* v. *Stonecifer*, 6 Cal. 411. So a defendant who receives a juror whose name is upon the poll-tax list only, cannot, after the verdict, object that he was not a competent juror: Id.; *People* v. *Sanford*, 43 Id. 31. An exemption from service on a jury is a personal privilege, and such persons are not disqualified from serving as jurors. If they fail to exercise their privilege, the parties cannot complain: Proffatt on Jury Trial, sec. 119; *State* v. *Wright*, 53 Me. 328; *State* v. *Forshner*, 43 N. H. 89; *State* v. *Adams*, 20 Iowa, 486.

Exemption from jury duty: See Code Civ. Proc., secs. 199, 200.

1076. *Causes of challenge, how stated—Juror not to be excused.*

SEC. 1076. In a challenge for implied bias, one or more of the causes stated in section ten hundred and seventy-four must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section ten hundred and seventy-three must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety; provided it appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him. The challenge may be oral, but must be entered in the minutes of the court or of the phonographic reporter. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 443; *took effect July* 1, 1874.]

Formed or expressed an opinion: See note to sec. 1074.

Newspaper opinion not preventing giving impartial verdict no cause for challenge: *People* v. *Cochran*, 61 Cal. 548.

1077. *Exceptions to challenge, and denial thereof.*

SEC. 1077. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon as are prescribed in section ten hundred and sixty-one, except that if

the exception be allowed the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

Compare with sections 1061, 1062.

Exceptions to court's ruling: Sec. 1170.

Where there is no denial of the facts alleged as ground of the challenge taken by the district attorney, and no exception is interposed, the decision of the court in allowing the challenge is not reviewable on appeal: *People* v. *Cochran*, 61 Cal. 548.

1078. *Challenge to be tried by the court.*

SEC. 1078. If the facts are denied, the challenge must be tried by the court. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 443; *took effect July* 1, 1874.]

A juror, when qualified.—To be able to sit on a jury without bias—that any opinion he has can be changed by evidence, and a willingness to be governed by the evidence—constitute a good juror if qualified in other respects: *People* v. *McCauley*, 1 Cal. 379. The mere hearing of or reading about a case, and even of a statement of the facts, does not disqualify a person, but it is the formation of a conclusion: *People* v. *Reynolds*, 16 Id. 128. If a person called as a juror has said: "The people ought to take the prisoner out of jail and hang him," it would be error to allow him to sit on the jury, and the court would grant a new trial: *People* v. *Plummer*, 9 Id. 298. But see *People* v. *Fair*, 43 Id. 137. Being a policeman, and having a general bad opinion of people charged with crime, is no valid objection to a person otherwise competent to sit on a jury: *People* v. *Reynolds*, 16 Id. 128. If a disqualified juror is once accepted, the objection cannot be interposed by one who knew the disqualification and did not urge it at the proper time: *People* v. *Stonecifer*, 6 Id. 405. As challenge for implied bias, counsel must allege one or more of the causes so specified: *People* v. *Hardin*, 37 Id. 259; *People* v. *Reynolds*, 16 Id. 130. Hearing the purported facts rumored, but conversing with none of the witnesses, and from this forming an opinion, is not a disqualification: *People* v. *Williams*, 17 Id. 142. General impressions of defendant being a bad man, from reading papers, etc., not a disqualification: *People* v. *Mahoney*, 18 Id. 180. Fixed conclusions do, but impressions do not, disqualify: *People* v. *Symonds*, 22 Id. 348. And these conclusions must amount to settled convictions, or they must have been expressed, to disqualify a juror: *People* v. *King*, 27 Id. 507. Where a juror, upon examination, states that he has formed a fixed, decided opinion in regard to the guilt or innocence of defendant, a subsequent statement by him that his opinion is not an unqualified one, and that he can try the case and render a verdict according to the evidence notwithstanding his opinion, will not make him competent to serve as a juror, and the challenge should be allowed: *People* v. *Weil*, 40 Id. 268. Where the juror stated that he would under no circumstances convict on circumstantial evidence, it was held that a challenge by the district attorney should be sustained: *People* v. *Ah Chung*, 54 Id. 398; see also *People* v. *Renfrow*, 41 Id. 39; *People* v. *Dick*, 37 Id. 277; *People* v. *Welch*, 49 Id. 174.

Juror, competency of.—In the examination of trial jurors as to their competency in a criminal case, the defendant is not restricted to the inquiry whether the juror can try the case and render a verdict under the law as declared by the court, and upon the evidence adduced, without regard to any previously formed opinion: *People* v. *Woods*, 29 Cal. 636. The court must determine the competency of a juror: Id.

Triers.—Prior to the amendment of section 1078, all challenges to jurors for actual bias were tried by three disinterested persons appointed by the court, and who were designated "triers."

1079, 1080. *Appointment and oath of triers.*

Sections 1079 and 1080 were repealed by act approved March 30, 1874; Amendments 1873–4, 443; took effect July 1, 1874.

1081. *Juror challenged may be examined as a witness.*

SEC. 1081. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry.

Proposed juror may be asked whether he would take the word of a Chinaman as soon as that of a white man: *People* v. *Car Soy*, 57 Cal. 102; *People* v. *Han Tin*, Id. 142.

1082. *Rules of evidence on trial of challenge.*

SEC. 1082. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge.

1083. *Decision of court to be entered.*

SEC. 1083. The court must allow or disallow the challenge, and its decision must be entered in the minutes of the court. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 443; *took effect July* 1, 1874.]

Allowance of challenge not reviewable. The action of the court in allowing a challenge to a juror will not, it seems, be reviewed on appeal: *People* v. *Atherton*, 51 Cal. 495; *People* v. *Murphy*, 45 Id. 142. Neither can the action of the court in sustaining a challenge for implied bias be excepted to or reviewed on appeal: *People* v. *Colson*, 49 Id. 679, sec. 1170, note.

1084, 1085. *Instructions to and decision of triers of challenge.*

Sections 1084 and 1085 were repealed by act approved March 30, 1874; Amendments 1873–4, 444; took effect July 1, 1874.

1086. *Challenges, first by the defendant and then by the people.*

SEC. 1086. All challenges to an individual juror, except peremptory, must be taken, first by the defendant, and then by the people, and each party must exhaust all his challenges before the other begins.

Challenges, order of: *People* v. *Scoggins*, 37 Cal. 676; *People* v. *Russell*, 46 Id. 121; *People* v. *Iams*, 57 Id. 115.

1087. *Order of challenges.*

SEC. 1087. The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel;
2. To an individual juror, for a general disqualification;
3. To an individual juror, for an implied bias;
4. To an individual juror, for an actual bias.

Challenges, how taken: Sec. 1073, note.
Challenges, order of: Secs. 1086, note, 1068, note.

1088. *Peremptory challenges may be taken after challenges for cause exhausted.*

SEC. 1088. If all challenges on both sides are disallowed, either party, first the people and then the defendant, may take a peremptory challenge, unless the parties' peremptory challenges are exhausted.

Examination of jurors.—Each party has a right to put questions to a juror, to show, not only that there exist proper grounds for a challenge for cause, but to elicit facts to enable the party to decide whether or not he will make a peremptory challenge: *People* v. *Car Soy*, 57 Cal. 102; *People* v. *Han Tin*, Id. 142. Where the prosecution passed the panel to the defendant, who declined to make any challenge, the prosecution may be permitted to interpose a peremptory challenge to one of the panel: *People* v. *McCarty*, 48 Id. 558.

CHAPTER II.

THE TRIAL.

1093. *Order of trial.*

SEC. 1093. The jury having been impaneled and sworn, the trial must proceed in the following order, unless otherwise directed by the court:

1. If the indictment or information be for felony, the clerk must read it, and state the plea of the defendant to the jury, and in cases where it charges a previous conviction, and the defendant has confessed the same, the clerk in reading it shall omit therefrom all that relates to such previous conviction. In all other cases this formality may be dispensed with.

2. The district attorney, or other counsel for the people, must open the cause and offer the evidence in support of the charge.

3. The defendant or his counsel may then open the defense, and offer his evidence in support thereof.

4. The parties may then respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

5. When the evidence is concluded, unless the case is submitted to the jury

on either side, or on both sides, without argument, the district attorney, or other counsel for the people, and counsel for the defendant, may argue the case to the court and jury; the district attorney, or other counsel for the people, opening the argument and having the right to close.

6. The judge may then charge the jury, and must do so on any points pertinent to the issue, if requested by either party; and he may state the testimony and declare the law. If the charge be not given in writing, it must be taken down by the phonographic reporter. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 21 (*Ban. ed.* 167); *took effect immediately.*]

Trials generally: See the suggestions of the supreme court to trial courts in regard to keeping their code before them on the trial of causes in *People* v. *Nichols*, 62 Cal. 518, 522. The trial court should adhere strictly to the provisions of the statute in respect to the mode of trial in criminal cases, rather than risk a reversal of the judgment by a deviation from the specific modes of procedure prescribed, even when the deviation does not seem to it material: *People* v. *Arnold*, 15 Id. 476.

Subd. 1. Reading indictment or information.—Failure of the clerk of the court to read the indictment and to state the defendant's plea to the jury is not such error as will warrant a reversal of the judgment, it appearing that the jury were, from the commencement of the trial, fully informed of the precise charge against the defendant, and of the issue raised by his plea of not guilty: *People* v. *Sprague*, 53 Cal. 491, followed in *People* v. *Gilbert*, 57 Id. 96, 99.

Where the previous conviction is confessed, it need not be read, and the jury need not pass upon the question: *People* v. *Carlton*, 57 Cal. 559.

Subd. 2. Order of introducing evidence. The mere order in which evidence is to be introduced upon the trial rests in the discretion of the court trying the cause: *People* v. *Shainwold*, 51 Cal. 468. The defendant in a criminal action is as much bound to produce testimony to rebut testimony for the prosecution, which merely tends to prove his guilt, as any other testimony introduced by the prosecution: *People* v. *Kelly*, 28 Id. 423.

Subd. 5. Argument: See an article on the subject of argument of counsel in criminal causes, treating the subject generally in 3 Crim. Law Mag. 619. The argument of the case must be made when the evidence is concluded, and not upon the case made out by the prosecution: *People* v. *Williams*, 43 Cal. 344. Counsel, as a general rule, are not allowed to read the law to the jury, but there are cases in which they may, by way of illustration, read to the jury reported cases or extracts from text-books, subject to the sound discretion of the court: *People* v. *Anderson*, 44 Id. 65; see *People* v. *Keenan*, 13 Id. 584. Courts may limit counsel to a reasonable time in presenting cases to juries. This discretion, which is necessarily an enlarged one, should be carefully exercised, and if ever done in capital cases, it should only be on very extraordinary and peculiar occasions. If the court imposes a limitation of time upon counsel against their consent, it is done at the risk of a new trial: *People* v. *Keenan*, 13 Id. 581. But see *State* v. *Collins*, 70 N. C. 241; S. C., 2 Green Crim. 739; *Lee* v. *State*, 51 Miss. 566, 569. When other counsel are associated with the district attorney in the prosecution of a criminal case, the court may, in its discretion, for good reason, allow the associate counsel to conclude the argument: *People* v. *Strong*, 46 Cal. 302; *People* v. *Murphy*, 47 Id. 104. It is irregular for counsel for the prosecution, against the objections of defendant's counsel, to comment in his argument to the jury upon the refusal of defendant to be cross-examined to the whole case; and for the court to permit it is erroneous: *People* v. *McGungill*, 41 Id. 429.

That it is improper for counsel to aver and argue from facts as to which no evidence has been offered, and that such procedure by one party will not justify it on the part of the other, see *People* v. *Mitchell*, 62 Cal. 411.

Number of counsel: Sec. 1095.

Order of argument: Sec. 1095, note.

Subd. 6. State the testimony and declare the law.—It is the duty of the court to state the testimony to the jury, and to declare to them the law: Const. Cal., art. 6, sec. 19; *People* v. *Ybarra*, 17 Cal. 166. A judge other than the one who tried the case may, by consent, charge the jury and receive their verdict: *People* v. *Henderson*, 28 Id. 471; see *People* v. *Hobson*, 17 Id. 424.

Instructions generally: See in note to secs. 1096, 1102, and 1127.

Charging juries upon questions of fact. Judges have no right to charge juries with respect to matters of fact. The conclusions to be drawn from the evidence is the peculiar province of the jury, and the court or judge has no right to interfere with it by declaring what has or what has not been proved, nor by stating that the weight of evidence is in favor or against a given fact: Const. Cal., art. 6, sec. 19; *People* v. *Ybarra*, 17 Cal. 166; *People* v. *Ah Fung*, 16 Id. 137; *People* v. *Williams*, 17 Id. 142; *People* v. *Strong*, 30 Id. 151; *People* v. *Barry*, 31 Id. 357; *People* v. *Dick*, 32 Id. 213; *People* v. *Cotta*, 49 Id. 166; *People* v. *Walden*, 51 Id. 588; *People* v. *Buster*, 53 Id. 612; *People* v. *Carrillo*, 54 Id. 63; *People* v. *Wong Ah Ngow*, Id. 151. Judges may determine and charge a jury whether there is any evidence with regard to an issue, or tending to sustain a fact on which a judgment may depend: *People* v. *Welch*, 49 Id. 174. So, if testimony has been introduced to prove a certain matter, the court may instruct the jury that testimony has been introduced tending to prove such matter: *People* v. *Vasquez*, Id. 560; see sec. 1127, note.

See proper refusal to give charge relative to the necessity of the prosecution's establishing its hypothesis to an absolute moral certainty, the evidence being direct and positive, and not circumstantial: *People* v. *Gilbert*, 60 Cal. 108.

See proper instructions in a case of rape: *People* v. *Angeles*, 61 Id. 188.

See erroneous charge in assault with deadly weapon, where there was no evidence tending to establish the circumstances recited as positive facts: *People* v. *Bird*, 60 Cal. 9. Erroneous charge in regard to self-defense: *People* v. *Flahave*, 58 Id. 249. Error in instruction in regard to self-defense cured: *People* v. *Gray*, 61 Id. 164, 182. Reversing for contradictory instructions: *People* v. *Simons*, 60 Id. 72.

Oral instructions.—The giving of an oral charge or instruction to the jury in a criminal case, without the defendant's consent, is error, and that consent cannot be presumed from his presence and failure to make the objection when the oral instruction is given: *People* v. *Beeler*, 6 Cal. 246; *People* v. *Demint*, 8 Id. 423; *People* v. *Woppner*, 14 Id. 437; *People* v. *Chares*, 26 Id. 78; *People* v. *Trim*, 37 Id. 274; *People* v. *Sanford*, 43 Id. 29; *People* v. *Prospero*, 44 Id. 186; *People* v. *Hersey*, 53 Id. 574. But reading sections from the code is not a violation of the provision requiring the charge to be in writing: *People* v. *Mortier*, 58 Id. 262; *People* v. *Brown*, 59 Id. 349. And as to identification of sections read, see *People* v. *Lewis*, 64 Id. 401. If oral instructions are given, the error is not cured by subsequently offering to give them in writing: *People* v. *Ah Fong*, 12 Id. 345. By mutual consent, the court may charge the jury orally: *People* v. *Kearney*, 43 Id. 383. On appeal, the presumption is always that the instructions given were in writing, unless the contrary affirmatively appear: *People* v. *Chung Lit*, 17 Id. 320; *People* v. *Garcia*, 25 Id. 531; *People* v. *Shuler*, 28 Id. 496. Under this section, instructions must be given in writing, or, if given orally, they must be taken down by the phonographic reporter. It is error *per se* to orally instruct the jury in the absence of the reporter: *People* v. *Hersey*, 53 Id. 574. When the record on appeal shows that oral instructions were given, it will be presumed that they were taken down by the reporter, unless it otherwise appear: *People* v. *Ferris*, 56 Id. 442. The defendant cannot object to an oral instruction to acquit him unless they find him guilty under the first count: Id. Where a jury has returned in court with a verdict, improper in form, the court may tell them verbally that it is not in form, and direct them to retire and bring in a proper verdict: *People* v. *Bonney*, 19 Id. 426.

In *People* v. *Jackson*, 57 Cal. 316, citing *People* v. *Bonney*, 19 Id. 426, the jury came into court and asked what was the least punishment for larceny; the court said they had nothing to do with that, yet told them, and as there was no short-hand reporter present, and this information was given orally, the defendant urged that it was error. The appellate court, however, ruled that what was said was entirely immaterial, and that the direction of the court amounted to nothing more than to admonish them to return and find a verdict, if they could do so, regardless of the punishment.

1094. *When order of trial may be departed from.*

SEC. 1094. When the state of the pleadings requires it, or in any other case, for good reasons, and in the sound discretion of the court, the order prescribed in the last section may be departed from.

Discretion as to order of trial: See *People* v. *Fair*, 43 Cal. 137. The court, in exercising its discretion, is not required to state any reasons therefor. The order of trial is a matter within the discretion of the court, and on appeal, it will be presumed to have exercised its discretion wisely: *People* v. *Haun*, 44 Id. 96; *People* v. *Strong*, 46 Id. 302.

1095. *Number of counsel who may argue the case to the jury.*

SEC. 1095. If the indictment or information be for an offense punishable with death, two counsel on each side may argue the cause to the jury. If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 21 (*Ban. ed.* 168); *took effect immediately.*]

Order of argument.—Section 364 of the criminal practice act provided: "If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately." Under that section it was held, in *People* v. *Fair*, 43 Cal. 137, that in capital cases the accused has the right to be heard by two counsel, and that if argued by two on each side, they should alternate; that under section 363 of criminal practice act (1094 of this code), the court might, in its discretion, direct which side should commence the argument to the jury, but by whichever side it was thus opened, the other was entitled to the close. "It will be observed that by the omission of the latter portion of the first sentence, *supra*, the order of argument is subject to the discretion of the court under section 1094, *ante:*" From commissioners' note. The defendant may be required to open the argument: *People* v. *Haun*, 44 Id. 96. The court may permit more than two counsel to address the jury in capital cases, either on behalf of the defendant or the people: *People* v. *Ah Wee*, 48 Id. 236. Where defendant has broken jail and escaped, he no longer has the right to be represented by counsel: *People* v. *Redinger*, 55 Id. 290.

Argument: Sec. 1093, subd. 5, note.

1096. *Defendant presumed innocent until the contrary is proved—Reasonable doubt.*

SEC. 1096. A defendant in a criminal action is presumed to be innocent until

the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

Presumption of innocence—Burden of proof.—In all criminal cases the guilt of the defendant must be established to a moral certainty and beyond all reasonable doubt. The law presumes every man innocent until the contrary is proved, and this presumption continues during the whole trial and until the jury determine otherwise. The definition of reasonable doubt, as given by Shaw, C. J., in *Commonwealth* v. *Webster*, 5 Cush. 320, is one generally quoted, and has been repeatedly recognized and indorsed as correct in this state. "It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge." This charge of Judge Shaw, as to reasonable doubt, has been adopted as a correct definition of the term by the supreme court of this state: *People* v. *Beck*, 58 Cal. 212; *People* v. *Ah Loy*, 57 Id. 566; *People* v. *Ashe*, 44 Id. 288; see also *People* v. *Cronin*, 34 Id. 191; *People* v. *Padillia*, 42 Id. 535. See a meaningless instruction in regard to reasonable doubt: *People* v. *Angeles*, 61 Id. 188; erroneous instruction: *People* v. *Mitchell*, 63 Id. 480. The defendant is entitled to the benefit of any reasonable doubt. He is entitled to have the jury instructed "that in determining whether or not he was guilty beyond a reasonable doubt, his good reputation as to traits involved in the charge, if proved, should be weighed as any other fact established, and that it might be sufficient to create a reasonable doubt as to his guilt:" *People* v. *Doggett*, 62 Id. 27, 29; citing *People* v. *Bell*, 49 Id. 489; *People* v. *Raina*, 45 Id. 292; *People* v. *Ashe*, 44 Id. 291; and see also approved instructions as to good character of defendant in *People* v. *Velarde*, 59 Id. 457, 463; *People* v. *De la Cour Soto*, 63 Id. 165; see also note to sec. 1102, "Character." The hypothesis contended for by the prosecution must be established to an absolute moral certainty, to the entire exclusion of any rational probability of any other hypothesis being true: *People* v. *Milgate*, 5 Id. 127; *People* v. *Strong*, 30 Id. 151; *People* v. *Lachanais*, 32 Id. 433; *People* v. *Padillia*, 42 Id. 535; *People* v. *Ashe*, 44 Id. 288; *People* v. *Brannon*, 47 Id. 96; *People* v. *Ah Sing*, 51 Id. 372; *People* v. *Kerrick*, 52 Id. 446; *People* v. *Morino*, 53 Id. 67; *People* v. *Ah Chung*, 54 Id. 398; *People* v. *Anthony*, 56 Id. 397; *People* v. *Marshall*, 59 Id. 386; *People* v. *Ah Loy*, 57 Id. 566. The prosecution must establish the guilt of the accused beyond a reasonable doubt, independent of any hypothesis produced on the part of the defendant: *People* v. *Cove*, 59 Id. 390.

Circumstantial evidence.—When the evidence against the accused is entirely circumstantial, each material fact going to make up the chain of circumstances must be proved to a moral certainty, and beyond all reasonable doubt: *People* v. *Phipps*, 39 Cal. 326; *People* v. *Ah Chung*, 54 Id. 398. The following instruction, usually asked and given when the evidence is circumstantial, need not be given where the evidence is all direct and positive: "The hypothesis contended for by the prosecution must be established to an absolute moral certainty, to the entire exclusion of any rational probability of any other hypothesis being true, or the jury must find the defendant not guilty: *People* v. *Gilbert*, 60 Id. 108, 111. In this case the meaning of "hypothesis" is discussed. See further, as to circumstantial evidence, note to section 1102. If a reasonable doubt is entertained by the jury upon any material fact in the case, they should be instructed to acquit the defendant: *People* v. *Eckert*, 19 Id. 603. And it is error to charge, "You are not legally bound to acquit him because you may not be entirely satisfied that the defendant, and no other person, committed the alleged offense:" *People* v. *Brown*, 56 Id. 405; *People* v. *Kerrick*, 52 Id. 446. And the converse should be charged to the jury: *People* v. *Cheong Foon Ark*, 61 Id. 527. In order to justify a conviction upon circumstantial evidence, it should be such as to produce nearly the same degree of certainty as that which arises from direct testimony: *People* v. *Cronin*, 34 Id. 191; *People* v. *Padillia*, 42 Id. 535; *People* v. *Hardisson*, 61 Id. 378. The jury cannot convict a defendant merely because they believe the evidence is such that a man of prudence would act upon it in his own affairs of the greatest importance, but they should be fully convinced of the correctness of their conclusion of the defendant's guilt: *People* v. *Brannon*, 47 Id. 96; *People* v. *Ah Sing*, 51 Id. 372. It is not necessary, however, that the evidence should show that the innocence of the defendant is impossible before he can be convicted: *People* v. *Brotherton*, 47 Id. 388. Preponderating proof is all that is necessary to prove a fact in the defendant's favor: *People* v. *Milgate*, 5 Id. 127; *People* v. *Stonecifer*, 6 Id. 405; *People* v. *Coffman*, 24 Id. 230. That preponderating proof need not be made by the defendant, see *People* v. *Cheong Foon Ark*, 61 Id. 527; *People* v. *Flanagan*, 60 Id. 2. "It would manifestly be shifting this burden [of proof] from the prosecution to the defendant to require the latter to establish his defense by a preponderance of evidence, and would deprive him of the doctrine of reasonable doubt, to the benefit of which he is justly and everywhere held entitled. Where the defense is insanity, an exception is made to the rule, but the present case does not come within that exception, nor the reason on which it is based:" *People* v. *Marshall*, 59 Id. 386, 388. Homicide is an exception in regard to requiring preponderating proof on the part of the defendant in certain cases, and this is by virtue of section 1105: *People* v. *Cheong Foon Ark*, 61 Id. 527.

Confused instructions, generally.—In addition to the citations above in regard to meaningless instructions, the following general language upon confused instructions is used in *People* v. *Hurley*, 57 Cal. 145: "Merely giving an instruction which of itself cannot convey a distinct idea of any legal proposition may not always be a fatal error; but when an instruction is confused and uncertain, or fails distinctly to lay down the law, while at the same time it contains hypothetical suggestions of the defendant's guilt, it is manifest that its effects must be injurious to the rights of the party on trial." See also note to sec. 1127.

1097. *When reasonable doubt as to degree, he can be convicted only of lowest.*

SEC. 1097. When it appears that the defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

1098. *Separate trials.*

SEC. 1098. When two or more defendants are jointly charged with a felony, any defendant requiring it must be tried separately. In other cases, the defendants jointly charged may be tried separately or jointly, in the discretion of the court. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 22 (*Ban. ed.* 168); *took effect immediately.*]

Separate trials.—A defendant in a joint indictment has a right to demand a separate trial, or to waive this right. If tried jointly, they must all unite in their challenges, both peremptory and for cause: *People* v. *McCalla*, 8 Cal. 301. When a co-defendant elects to be tried separately, he is a competent witness for the other defendant charged with the same offense, the credibility of his testimony being left to the jury: *People* v. *Labra*, 5 Id. 183; *People* v. *Newberry*, 20 Id. 439; see *People* v. *Trim*, 39 Id. 75. Where defendants in open court waived separate trial, but afterward, before the jury were sworn, moved for separate trials, it was held within the discretion of the court to refuse the application: *People* v. *Alviso*, 55 Id. 230.

1099. *Discharging one of several defendants before verdict, that he may be a witness.*

SEC. 1099. When two or more persons are included in the same charge, the court may, at any time before the defendants have gone into their defense, on the application of the district attorney, direct any defendant to be discharged, that he may be a witness for the people. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 22 (*Ban. ed.* 168); *took effect immediately.*]

Discharge of one of several defendants, etc.—This section contemplates the case of a joint indictment of two or more persons, a joint trial under the indictment, and an application by the district attorney to the court for the discharge of one of the defendants before he has gone into his defense. On the happening of these contingencies the court is authorized to discharge the particular defendant from the indictment, that he may be a witness for the people: *People* v. *Bruzo*, 24 Cal. 41. Such discharge is in legal effect an acquittal: Id., sec. 1101. Promises by a committing magistrate, with the assent and concurrence of the district attorney, to a person under arrest, that if he will become a witness for the people, against other persons under arrest for the same offense, he shall be acquitted, furnish no grounds for arresting a judgment against such person if he is subsequently indicted and convicted of that offense, although, induced by such promises, he did so testify and thereby implicated himself: *People* v. *Indian Peter*, 48 Id. 250.

1100. *Same.*

SEC. 1100. When two or more persons are included in the same indictment or information, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged before the evidence is closed, that he may be a witness for his co-defendant. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 22 (*Ban. ed.* 168); *took effect immediately.*]

Co-defendants as witnesses.—Where persons are jointly indicted, but separately tried, each may be a witness for the other: *People* v. *Labra*, 5 Cal. 183; *People* v. *Newberry*, 20 Id. 439.

1101. *Effect of such discharge.*

SEC. 1101. The order mentioned in the last two sections is an acquittal of the defendant discharged, and is a bar to another prosecution for the same offense.

Jeopardy: Sec. 687, and note.

1102. *Rules of evidence in civil applicable to criminal cases, except, etc.*

SEC. 1102. The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this code.

Admissions and confessions.—In criminal actions the term "admissions" is generally applied to those matters of fact which do not involve criminal intent; while the term "confessions" is generally restricted to acknowledgments of guilt. The rules of evidence are in both cases the same: 1 Greenl. Ev., sec. 170. The admission of a fact in open court during the progress of a trial by a defendant's attorney, in his presence, and not objected to by him, is presumed to be with his consent, and may be read in evidence against him: *People* v. *Garcia*, 25 Cal. 531. So admissions made by the district attorney are binding upon the people: *People* v. *Robles*, 34 Id. 591. Statements of a party who has been robbed made to a third person as to the description of the person who robbed him, are hearsay and inadmissible in defendant's behalf to show that he is not the person thus described: *People* v. *McCrea*, 32 Id. 98. Neither are statements of the injured party of the defendant's innocence admissible: *People* v. *McLaughlin*, 44 Id. 435. Admissions cannot be shown by memoranda made at the time, though the witness who made them says they are correct: *People* v. *Elyea*, 14 Id. 144.

A confession, in criminal law, is a person's declaration of his agency in a participation in a crime: *People* v. *Strong*, 30 Id. 151; *People* v. *Parton*, 49 Id. 637; *People* v. *Velarde*, 59 Id. 457. An admission of a statement declaratory of innocence is not to be rejected because evidence of guilt when taken with other facts: *People* v. *Velarde*, *supra*. To be admissible as evidence against such person it must be voluntary. If made through fear or hope of reward it cannot, if objected to, be used as evidence against him: *People* v. *Rodriguez*, 10 Id. 50; *People* v. *Smith*, 15 Id. 408; *People* v. *Ah How*, 34 Id. 218; *People* v. *Devine*, 46 Id. 45; *People* v. *Soto*, 49 Id. 67; *People* v. *Barric*, Id. 342. See a correct exposition of the law on this subject in the instruction to the jury in *People* v. *Ramirez*, 56 Id. 533. Such objection must be made at the time the confession is offered in evidence: *People* v. *Rodriguez*, 10 Id. 50; *People* v. *Long*, 43 Id. 446. Whether admissible or not is for the court to determine: *People* v. *Ah How*, 34 Id. 218; *People* v. *Barric*, 49 Id. 345. See *People* v. *Mortier*, 58 Id. 262, where a confession was held voluntary and properly admitted. If voluntary when made, confessions are admissible, even if, on prior occasion, some promise of favor not acted upon, and which had ceased to be operative, had been made to induce the accused to confess: *People* v. *Jim Ti*, 32 Id. 60; see *People* v. *Johnson*, 41 Id. 452. Admissions and confessions may be implied from the acquiescence of the party in the statements of others made in his presence, when the circumstances are such as to afford an opportunity to act or speak, and would naturally call for some action or reply from men similarly situated: *People* v. *McCrea*, 32 Id. 100; *People* v. *Estrado*, 49 Id. 171. Such statements are only admissible against such party to the extent that they are admitted by him to be correct, either by words or conduct; and they are inadmissible unless accompanied with proof of his statements or conduct in response thereto: *People* v. *Ah Yute*, 54 Id. 89. Confessions, although obtained by threats, are admissible if the truth thereof is shown by other evidence: *People* v. *Ah Ki*, 20 Id. 177. The fact that a crime has been committed cannot be proved by the extrajudicial confessions or statements of the defendant alone: *People* v. *Jones*, 31 Id. 565; *People* v. *Thrall*, 50 Id. 415. A part of a confession should not be admitted in evidence and the balance rejected: *People* v. *Murphy*, 39 Id. 57. Statements made by the defendant while asleep are not evidence: *People* v. *Robinson*, 19 Id. 40. A witness who has a very imperfect knowledge of the language employed in the conversation, and who did not understand the whole of the conversation in which the supposed confession was made to him by the accused, is incompetent to testify as to such confession: *People* v. *Gelabert*, 39 Id. 663.

Alibi.—For an instruction upon this subject sufficiently favorable to the accused, see *People* v. *O'Neil*, 59 Cal. 259. The commission of an offense implies the presence of the defendant at the necessary time and place: *People* v. *Fong Ah Sing*, 64 Id. 253. Any evidence that goes to show that the defendant was not present is always competent. Evidence tending to establish an *alibi*, though insufficient of itself to establish that fact, is not to be excluded from the case: *People* v. *Fong Ah Sing*, *supra*. Adducing it is termed setting up an *alibi*: 1 Bish. Crim. Proc., sec. 1061; *Armstrong* v. *People*, 70 N. Y. 38, 49; *Commonwealth* v. *Choate*, 105 Mass. 451. See a case of an attempted *alibi*, *People* v. *Chin Ah Hong*, 61 Cal. 376. It cannot be said, as a matter of law, that an unsuccessful attempt to prove an *alibi* is a circumstance of "great weight" against the prisoner: *People* v. *Malaspina*, 57 Id. 628. The setting up of an *alibi* does not change the presumptions and burden of proof: *Toler* v. *State*, 16 Ohio, 583; *Fife* v. *Commonwealth*, 29 Pa. St. 429; *State* v. *Josey*, 64 N. C. 56. And although a person who relies upon this as a defense must prove it the same as any other fact, yet if on account of the *alibi* the jury are not satisfied beyond a reasonable doubt of the defendant's guilt, they must acquit him: *State* v. *Cameron*, 40 Vt. 555; *French* v. *State*, 12 Ind. 170; *Gibbs* v. *State*, 1 Tex. App. 12; *Otmer* v. *People*, 76 Ill. 149. The proof of the absence of the defendant when the crime was committed should cover the whole time when his presence was required: *West* v. *State*, 48 Ind. 483; *Briceland* v. *Commonwealth*, 47 Pa. St. 463. But evidence that does not cover the whole time will not for that reason be rejected: *Kaufman* v. *State*, 48 Ind. 483. Any competent evidence to disprove an *alibi* is admissible: *Brown* v. *People*, 17 Mich. 429; *Commonwealth* v. *Williams*, 105 Mass. 62. The defendant's admissions are admissible for such purpose: *Rex* v. *Findon*, 5 Car. & P. 132. "Proving an *alibi*" is the title of an article reviewing many cases in 6 Crim. L. Mag. 655.

Best evidence: See "Impeachment of Witnesses," *post*, note; sec. 1321, note.

Burglarious tools as evidence.—Such tools, when found in the defendant's possession soon after the commission of the offense, may be offered in evidence by the prosecution whenever they constitute a link in the chain of circumstances which tend to connect the defendant with the particular burglary charged in the indictment. Before, however, such tools are admissible in evidence, it must be shown that the burglary charged was in fact committed, and that it was committed with the aid of burglarious tools like those proposed to be shown in evidence, and that the defendant was

in the vicinity at or about the time the offense was committed: *People* v. *Winters*, 29 Cal. 658.

Character.—Charge as to defendant's character, when not impeached, to be considered of ordinary fairness, and to be taken into consideration in determining his guilt, properly not given, because his character was not in evidence: *People* v. *Johnson*, 61 Cal. 142. That defendant's good character may be used to create a reasonable doubt of his guilt, see *People* v. *Velarde*, 59 Id. 547; *People* v. *Doggett*, 62 Id. 27, and cases cited; *People* v. *De la Cour Soto*, 63 Id. 165; *People* v. *Smith*, 59 Id. 601, 607.

Corpus delicti: Sec. 187, note.

Circumstantial evidence.—Where a criminal charge is to be proved by circumstantial evidence, the proof must be consistent with the prisoner's guilt, and inconsistent with every other rational conclusion: *People* v. *Shuler*, 28 Cal. 490; *People* v. *Strong*, 30 Id. 151; *People* v. *Anthony*, 56 Id. 397, 399, containing an instruction laying down the rule correctly as to circumstantial evidence, followed in *People* v. *Davis*, 64 Id. 440. So also *People* v. *Ramirez*, 56 Id. 533, 538; and *People* v. *Morrow*, 60 Id. 142, where the subject is considered at some length. The circumstances proved must all concur to show that the defendant committed the crime, and must exclude to a moral certainty every other hypothesis but the single one of guilt: *People* v. *Dick*, 32 Id. 213. "Where the evidence is entirely circumstantial, yet is not only consistent with the guilt of the defendant, but inconsistent with any other rational conclusion, the law makes it the duty of the jury to convict, notwithstanding such evidence may not be as satisfactory to their minds as the direct testimony of credible witnesses would have been:" *People* v. *Cronin*, 34 Id. 202. It is sufficient if such evidence produces nearly the same degree of certainty as that which arises from direct testimony: Id.; *People* v. *Padillia*, 42 Id. 535. When independent facts and circumstances are relied upon to identify the accused as the person committing the offense charged, and taken together are regarded as a sufficient basis for a presumption of his guilt to a moral certainty, or beyond a reasonable doubt, each material independent fact or circumstance necessary to complete such chain or series of independent facts, tending to establish a presumption of guilt, should be established to the same degree of certainty as the main fact which these independent circumstances, taken together, tend to establish; that is, each essential independent fact in the chain or series of facts relied upon to establish the main fact, must be established to a moral certainty, or beyond a reasonable doubt: *People* v. *Phipps*, 39 Id. 326, 333; *People* v. *Ah Chung*, 54 Id. 398. It is unnecessary to justify an inference of guilt from circumstantial evidence, that the existence of the inculpatory facts should be absolutely incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of the defendant's guilt: *People* v. *Murray*, 41 Id. 66. Where the circumstances proved leave a reasonable doubt as to one of the facts essential to establish guilt, the jury should acquit: *People* v. *Anthony*, 56 Id. 397.

As to the admissibility of circumstances tending to connect the defendant with the crime, see *People* v. *Rolfe*, 61 Cal. 542.

Reading cases of circumstantial evidence to the jury, and correct charge of the court not to attach too much importance to them: See *People* v. *Ah Fook*, 64 Cal. 380.

See *People* v. *Malaspina*, 57 Cal. 628, where the court erred in not permitting the accused to explain why he carried a pistol.

Corporate existence: Sec. 1107, note.

Depositions as evidence: Secs. 869, note, 1345, note, 1362, note.

Drunkenness: Sec. 22, note.

Dying declarations.—The admission of dying declarations in evidence in cases of homicide constitute one of the principal exceptions to the general rule rejecting hearsay evidence. They are admitted in evidence from necessity, and because the persons whose declarations are thus admitted are considered as standing in the same situation as if they were sworn; the danger of impending death being equivalent to the sanction of an oath: 1 Greenl. Ev., sec. 157; *People* v. *Glenn*, 10 Cal. 32; *People* v. *Lawrence*, 21 Id. 368. It is sufficient for deceased's sense of impending death to be proved by but one witness; the others may confine their testimony to the declarations: *People* v. *Garcia*, 63 Id. 19. Before such declarations are admitted in evidence, it should appear that the declarant was at the point of death; that he was conscious of approaching dissolution, and had lost all hope of a recovery, and that he made the declaration under the full belief that he was about to die: *People* v. *Lee*, 17 Id. 76; *People* v. *Ybarra*, Id. 166; *People* v. *Sanchez*, 24 Id. 17; *People* v. *Vernon*, 35 Id. 49; *People* v. *Ah Dat*, 49 Id. 652. If it appears that the deceased had any expectation or hope of recovery, however slight it may have been, and though death actually ensued within an hour afterwards, the declarations are not admissible: *People* v. *Hodgdon*, 55 Id. 72. Where a dying declaration has been introduced in evidence by the prosecution, the defendant is entitled to prove other statements made by the deceased, contradicting his dying declarations: *People* v. *Lawrence*, 21 Id. 368. The fact that a written statement of the declarations made by the deceased, *in extremis*, was at the time verified by him, and introduced in evidence at the trial of the party thereby accused of the murder, furnishes no objection to the introduction of oral evidence of the same or similar dying declarations of deceased: *People* v. *Vernon*, 35 Id. 49. The rule that no person is incompetent to be a witness in this state on account of his opinions on matters of religious belief applies to dying declarations: *People* v. *Sanford*, 43 Id. 29; *People* v. *Chin Mook Sow*, 51 Id. 597. Statements of the deceased concerning the circumstances attending the difficulty in which he was wounded, made after he was wounded, but at a time when he did not expect to die, are not admissible on defendant's behalf: *People* v. *McLaughlin*, 44 Id. 435; *People* v. *McCauley*, 45 Id. 146; and see "Res Gestæ," *infra*, and *People* v. *Fong Ah Sing*, 64 Id. 253. See, generally, *People* v. *McCrea*, 32 Id. 98; *People* v. *Carlton*, 6 Pac. C. L. J. 917; and *People* v. *Taylor*, 59 Cal. 640. This last decision contains an elaborate review of the law on this subject by Judge Thornton, and is followed in *People* v. *Gray*, 61 Id. 164, 175.

Evidence in criminal actions.—The general rules of evidence are the same in both criminal and civil cases: *People* v. *Murphy*, 45

Cal. 137. The prosecution, on a second trial for a crime, may prove what a witness, since deceased, testified to upon a former trial: Id.; 1 Greenl. Ev., sec. 163. See, as to what evidence is required to convict in criminal cases, sec. 1096, note. As to the proof of particular crimes, see the sections defining such crimes; and see "Witnesses," *infra*. That party cannot move to strike out evidence which he did not object to when offered, see *People* v. *Rolfe*, 61 Cal. 542.

Otherwise provided: See sec. 686, in regard to being confronted with witnesses: *People* v. *Chuny Ah Chue*, 57 Cal. 567; see sec. 1323; defendant cannot be made a witness against himself: *People* v. *Johnson*, 57 Cal. 571.

Evidence in civil cases: Code Civ. Proc., pt. 4.

Flight as evidence of guilt.—The flight of a person suspected of a crime is a circumstance to be weighed by the jury as tending in some degree to prove a consciousness of guilt, and is entitled to more or less weight according to the circumstances of the particular case. Such evidence is received, not as part of the *res gestæ* of the criminal act itself, but as indicative of a guilty mind: *People* v. *Stanley*, 47 Cal. 114; *People* v. *Collins*, 48 Id. 277; *People* v. *Wong Ah Ngow*, 54 Id. 151; *People* v. *Welsh*, 64 Id. 167. This rule extends only to the person fleeing, and not to a case where a conspiracy to commit a crime has been entered into between two or more, and the flight of a co-conspirator is sought to be proved against another on his separate trial: *People* v. *Stanley*, 47 Id. 114. Where four men jointly commit a robbery, evidence of the flight of one, on the separate trial of another who did not flee, is admissible to show that after his arrest he had an opportunity to throw away the money stolen: *People* v. *Collins*, 48 Id. 277. So if a person when arrested on a charge of larceny, and, after being informed of the cause of his arrest, escapes or attempts to escape, it is a circumstance that the jury may consider in determining his guilt or innocence: *People* v. *Strong*, 46 Id. 302. It does not, however, raise a strong presumption of the defendant's guilt: *State* v. *Arthur*, 21 Iowa, 430.

Hearsay evidence: See "Admissions and Confessions," *ante*, note; and "Dying Declarations," *ante*, note.

Identity of defendant is for the jury: *People* v. *Williams*, 59 Cal. 674; *People* v. *Rolfe*, 61 Id. 540.

Insanity, evidence of: Sec. 26, subd. 3, note.

Instructions: See in note to sec. 1096; also various instructions approved or disapproved under the subject to which they relate. When the law is correctly stated to the jury, it is not necessary to give an exposition of its reasons: *People* v. *Ramirez*, 56 Cal. 533.

Intent.—The *animus* with which an act was done is what constitutes its criminality. There must be a union or joint operation of act and intent to constitute a crime: Sec. 20, note. Such intent may be proved either by evidence direct or indirect, tending to establish the fact, or by inference of law from other facts proved: 3 Greenl. Ev., sec. 13; *People* v. *Pool*, 27 Cal. 576. So, whenever it is important to determine the character of an act perpetrated, and to ascertain the intent of the accused, the existence of any motive likely to instigate him to the commission of the crime may be proved, and is relevant and competent for the purpose of fixing or tending to fix the crime upon him: 1 Stark. Ev., secs. 13, 14. When the act is proved to have been done by the accused, if it be an act in itself unlawful, the law in the first instance presumes it to have been intended, and the proof of justification or excuse lies on the defendant to overcome this legal and natural presumption: 3 Greenl. Ev., secs. 13, 14, 18; *People* v. *Harris*, 29 Cal. 681; *York's Case*, 9 Met. 103. So every sane man is presumed to intend the consequences of his own acts, and when he commits an unlawful act, it is presumed to be done with an unlawful intent: *People* v. *Kennedy*, 55 Cal. 201. Such intent is generally a question of fact for the jury: *People* v. *Soto*, 53 Id. 415. In some cases, however, there need not be a specific intent shown to commit a crime upon the person charged, as where a man shoots at one person and kills another: *People* v. *Keefer*, 18 Id. 637.

Locus delicti: Sec. 777, note. Necessity of proving: *People* v. *Tarpey*, 59 Cal. 371; *People* v. *Beavans*, 52 Id. 470; *People* v. *Aleck*, 61 Id. 137.

Malice: Secs. 187, note, 188, note; *People* v. *Raten*, 63 Cal. 421.

Possession of stolen property.—The mere possession of property recently stolen is not, of itself, sufficient evidence upon which to convict the possessor of the theft. It is a circumstance tending to show guilt, but not of itself sufficient to warrant a conviction: *People* v. *Levison*, 16 Cal. 98; *People* v. *Chambers*, 18 Id. 382; *People* v. *Ah Ki*, 20 Id. 177; *People* v. *Kelly*, 28 Id. 424; *People* v. *Rodundo*, 44 Id. 538; *People* v. *Gill*, 45 Id. 285; *People* v. *Noregea*, 48 Id. 123; *People* v. *Ah Sing*, 59 Id. 400; *People* v. *Clough*, Id. 438; *People* v. *Velarde*, Id. 457, 463. In these last two cases instructions taken from the case of *People* v. *Gill*, *supra*, were approved of. For a confused instruction upon the subject, see *People* v. *Hurley*, 57 Id. 145. So if a person is indicted for breaking and entering a house with intent to steal goods therein, the mere possession of such goods, shortly after the alleged breaking, although a circumstance to be considered in determining his guilt, is not sufficient to convict: *People* v. *Beaver*, 49 Id. 57. An instruction, however, that the possession of stolen property, supported by other evidence tending to show guilt, is a strong circumstance tending to show guilt, is not erroneous by reason of the use of the word "strong:" *People* v. *Ah Sing*, 59 Id. 400; *People* v. *Titherington*, Id. 598. To justify the inference of guilt from the possession of the fruits of crime, it is important that it be a recent possession, or so soon after the commission of the crime as to be at first view not perfectly consistent with innocence: 3 Greenl. Ev., sec. 33; *People* v. *Swinford*, 57 Cal. 86. So to raise such presumption it is necessary that the stolen property should be found in the exclusive possession of the prisoner. A constructive possession is insufficient: 3 Greenl. Ev., sec. 33. And to justify the inference of defendant's guilt from possession, it must also appear "that the possession was personal, and that it involved a distinct and conscious assertion of possession by him. And even then such possession may be explained:" *People* v. *Hurley*, 60 Cal. 74. In this case the question of possession as evidence is carefully discussed,

Presumptions in criminal cases: See an excellent article by Wharton, in Crim. Law. Mag. 1; also statement of rules by Lawson, in 4 Id. 643, 845.

Res gestæ.—Declarations and circumstances which are contemporaneous with the main fact under consideration, and which are so connected with it as to illustrate its character, are not regarded as hearsay, but they are admissible as original evidence. "The distinguishing feature of declarations of this class is that they should be the necessary incidents of the litigated act; necessary in this sense, that they are part of the immediate concomitants or conditions of such act, and are not produced by the calculated policy of the actors. They need not be coincident as to time if they are generated by an excited feeling which extends without break or let-down from the moment of the event they illustrate. In other words, they must stand in immediate casual relation to the act, and become part either of the action immediately producing it, or of action which it immediately produces. Incidents that are thus immediately and unconsciously associated with an act, whether such incidents are doings or declarations, become in this way evidence of the character of the act:" Whart. Crim. Ev., sec. 263; see Chief Justice Cockburn's definition of *res gestæ*, given in note to the section just cited. Under this rule, declarations of the deceased concerning the circumstances attending the receipt of his fatal wound, made at a time immediately subsequent to the infliction of the wound, and so soon as to preclude the idea of deliberate design, are to be regarded as contemporaneous, and therefore admissible: *People* v. *Vernon*, 35 Cal. 49. So where, on the trial of a person charged with an assault with intent to commit murder, evidence has been introduced tending to show that defendant was first assaulted by the injured party and several other persons, the statements of the latter at the time of the assault, illustrative of its object and the motive prompting it, are admissible as part of the *res gestæ: People* v. *Roach*, 17 Id. 297; see also *People* v. *Arnold*, 15 Id. 477. So declarations of a person who has been mortally wounded are admissible as evidence if part of the *res gestæ*, although not made with a sense of impending dissolution: *Commonwealth* v. *McPike*, 3 Cush. 181; *Commonwealth* v. *Hackett*, 2 Allen, 136; *State* v. *Porter*, 34 Iowa, 131; *Jackson* v. *State*, 52 Ala. 305. But such is not the case when they relate to anything beyond the *corpus delicti:* Whart. Crim. Ev., sec. 296; see *Denton* v. *State*, 1 Swan, 279; *Donnelly* v. *State*, 26 N. J. L. 463, 601; *Jackson* v. *State*, 52 Ala. 305; *Crookham* v. *State*, 5 W. Va. 510. Declarations of the deceased at the time he was shot are admissible: *People* v. *Brown*, 59 Cal. 350, 353; and so were declarations after deceased's poisoning, as to his belief in the cause of his death: *People* v. *Taylor*, Id. 640. Statements of the deceased concerning the difficulty in which he was wounded, made some time after he was wounded, but at a time he did not expect to die, are not admissible on defendant's behalf: *People* v. *McLaughlin*, 44 Id. 435; *People* v. *McCauley*, 45 Id. 146; *People* v. *Ah Lee*, 60 Id. 85, discussing the point fully. The declarations are not required to be precisely concurrent, in point of time, with the principal fact, if they spring out of the principal transaction, if they tend to explain it, are voluntary and spontaneous, and are made at a time so near it as to preclude the idea of deliberate design: *People* v. *Vernon*, 35 Id. 51; 1 Greenl. Ev., sec. 108; *Mitchum* v. *State of Georgia*, 11 Ga. 615; *Commonwealth* v. *McPike*, 3 Cush. 181. They must be contemporaneous with the act to which they are intended to give character: *Aguirre* v. *Alexander*, 58 Cal. 21; *Emeric* v. *Alvarado*, 1 West Coast Rep. 708; S. C., 64 Cal. 529. Declarations of the deceased, in a prosecution for manslaughter, made before the meeting with the accused, to the effect that he did not intend to assault accused, are not admissible: *People* v. *Carlton*, 57 Id. 83; nor his declarations made half an hour after the shooting, as to what he intended to do with accused: *People* v. *Westlake*, 62 Id. 303. Evidence of accused's manner and conduct when arrested is admissible: *People* v. *Shem Ah Fook*, 1 West Coast Rep. 112; S. C., 64 Cal. 380. Bloody clothing worn by deceased at the time of the homicide is admissible as part of the *res gestæ: People* v. *Hong Ah Duck*, 61 Id. 387; *People* v. *Majors*, 2 West Coast Rep. 580; and evidence of the condition of the body: Id. Possession by defendant of two bars of bullion shortly after the murder of deceased, and the loss from his person of two bars of bullion, together with evidence of defendant's known poverty, is admissible to connect defendant with the crime: *People* v. *Foster*, 64 Cal. 297. So it is permissible to show that the wounded man, in a trial for assault, pointed to the accused, and told witness to arrest him, and that accused thereupon ran away: *People* v. *Lock Wing*, 61 Id. 80; and that the deceased, shortly after the infliction of the mortal wound, pointed to the accused, said he did it, and that there was no cause for it: *People* v. *Abbott*, 4 West Coast Rep. 132.

Reporter's notes.—The report of the official reporter of any court, duly appointed and sworn, when written out in long-hand, and certified as being a correct transcript of the testimony and proceedings in the case, is *prima facie* a correct statement of such testimony and proceedings: Sec. 273, Code Civ. Proc. Such notes of evidence are *prima facie* evidence only in the court below, and cannot be considered in the supreme court: *People* v. *Woods*, 43 Cal. 176; *People* v. *Armstrong*, 44 Id. 326. Such notes, however, are not even *prima facie* evidence of the testimony given, where it was taken through an interpreter: *People* v. *Lee Fat*, 54 Id. 527; *People* v. *Ah Yute*, 56 Id. 119. See *People* v. *Chung Ah Chue*, 57 Id. 567, distinguishing *People* v. *Devine*, 46 Id. 48, and construing section 686, *ante*, and holding the reporter's notes of testimony given at a former trial by a witness now out of the state inadmissible. The case from 57 Id. 567 is followed in *People* v. *Qurise*, 59 Id. 343. In *People* v. *Morine*, 61 Id. 367, a part of the reporter's notes was read in evidence by the defendant, who called a witness also to testify as to other statements made at a former trial; the prosecution was then permitted, against objection, to read that portion of the notes bearing upon the statements testified to, and this was held error.

As part of a bill of exceptions: See note to sec. 1171.

Reputation and character of defendant. The defendant in a criminal action is entitled to prove his previous good character for honesty and integrity. Such proof must be taken in consideration by the jury in determining the

question of guilt or innocence. When proved, it is a circumstance tending in a greater or less degree to establish his innocence: *People* v. *Stewart*, 28 Cal. 395; *People* v. *Ashe*, 44 Id. 288; *People* v. *Raina*, 45 Id. 292; *People* v. *Shepardson*, 49 Id. 631; *People* v. *Casey*, 53 Id. 360. Evidence on this subject must not be as to a particular fact, but with reference to the whole case then being tried: *People* v. *Milgate*, 5 Id. 127. On a trial for murder, the character of the defendant for peace and quiet is involved in the issue of not guilty: *People* v. *Stewart*, 28 Id. 395, overruling *People* v. *Josephs*, 7 Id. 129, and *People* v. *Lombard*, 17 Id. 316. The bad character of the defendant is never admissible in evidence against a defendant as foundation for presuming guilt: *State* v. *Lapage*, 56 N. H. 245; *State* v. *Hare*, 74 N. C. 591; *Harrison* v. *State*, 37 Ala. 154; *People* v. *Fair*, 43 Cal. 137. The law presumes his character good, and when this presumption is met by *prima facie* evidence of guilt, he may introduce evidence of his good character: *People* v. *Fair*, *supra*. The prosecution may then, in rebuttal, show that his character is bad; but not until then can his character be impeached: Id. The failure of the defendant to introduce evidence of his good character cannot be considered by the jury as a circumstance against him: *Ormsby* v. *People*, 53 N. Y. 472; *People* v. *White*, 24 Wend. 520.

Idem—Of deceased.—The reputation of the deceased cannot be given in evidence, except where the circumstances of the case raise a doubt in regard to the question as to whether the prisoner acted in self-defense or not: *People* v. *Murray*, 10 Cal. 309; *People* v. *Lombard*, 17 Id. 316; *People* v. *Anderson*, 39 Id. 703. Whether the deceased was a dangerous man or not is immaterial; his reputation as such constitutes the legitimate subject of inquiry: *People* v. *Anderson*, *supra*. Such evidence is admissible only when it tends to prove that the prisoner had some grounds, as a reasonable man, to fear that he was himself about to receive some bodily harm, and that he acted under the influence of fear: *People* v. *Murray*, 10 Id. 309; *People* v. *Edwards*, 41 Id. 640. Where testimony as to the character of the deceased has been introduced by the defendant, the prosecution may also introduce testimony upon the same point: *People* v. *Iams*, 57 Id. 115.

Idem—Of witness.—Where the defendant proves that a witness called and examined for the prosecution has been convicted of a felony, it is an assault upon his character, and the prosecution may, in rebuttal, examine witnesses to prove that the reputation of the witness for truth and integrity is good in the community where he resides: *People* v. *Amanacus*, 50 Id. 233. So where evidence is introduced to show that a witness has been suborned, evidence of his good character for truth and veracity is admissible: *People* v. *Ah Fat*, 48 Id. 61.

Self-defense: Sec. 197, note.

Statements of deceased: See "Dying Declarations," *supra*.

Statements of third persons: See "Admissions and Confessions," *supra*.

Threats.—For the purpose of showing the intent of the accused and the state of his mind toward the person threatened, threats made by him prior to the commission of the alleged offense may be shown against him: *Aycock* v. *State*, 2 Tex. App. 381; *Thrasher* v. *State*, 3 Id. 281; *Commonwealth* v. *Madan*, 102 Mass. 1; *Cluck* v. *State*, 40 Ind. 263; *Nichols* v. *Commonwealth*, 11 Bush, 575. But threats made by the defendant against one other than the deceased cannot be shown to have been made immediately prior to the homicide: *People* v. *Henderson*, 28 Cal. 466. Where the defendant, to excuse or mitigate his acts, claims they were in self-defense, the particulars of the transaction being material, he may give in evidence the prior conduct, threats, or other utterances of the person with whom he was contending, for the purpose of showing that the circumstances were such as to excite his reasonable fears, and that his life was in danger, or that he was in serious danger of bodily harm, and therefore his act justifiable: *People* v. *Williams*, 17 Id. 142; *People* v. *Anderson*, 39 Id. 703; *State* v. *Robertson*, 30 La. Ann. 340; *Holloway* v. *Commonwealth*, 11 Bush, 344; *State* v. *Turpin*, 77 N. C. 473. To be admissible, however, it should appear that the threats, etc., were known to the defendant prior to the transaction: *People* v. *Henderson*, 28 Cal. 465; *People* v. *Scoggins*, 37 Id. 676. But in a case of homicide, where it is doubtful which party commenced the affray, threats made by the deceased are admissible on the part of the defendant, although unknown to him at the time of the homicide, as facts tending to illustrate the question as to which was the first assailant: *People* v. *Scoggins*, 37 Id. 676; *People* v. *Arnold*, 15 Id. 476; *People* v. *Alivtre*, 55 Id. 263; *People* v. *Travis*, 56 Id. 251. And as to the admissibility of threats to prove malice, see *People* v. *Hong Ah Duck*, 61 Id. 387; see *People* v. *Henderson*, 28 Id. 466. Without some evidence or facts relating to the homicide, threats communicated to the defendant are not necessarily admissible: *People* v. *Taing*, 53 Id. 602. And see *People* v. *Iams*, 57 Id. 115, where the deceased, though having made threats previously, was not in any position to carry them into effect when he was shot.

Fear excited by threats: See sec. 198, *ante*.

Witnesses.—All persons, except as provided in section 1880 of the Code of Civil Procedure, who have organs of sense, can perceive, and perceiving can make known their preceptions to others, may be witnesses: Code Civ. Proc., sec. 1879. The defendant in a criminal action is not, without his consent, a competent witness for or against himself. He cannot be compelled to be a witness, and no presumption can be properly indulged in against him for not doing so: *People* v. *Anderson*, 39 Cal. 704; *People* v. *Tyler*, 36 Id. 522; *People* v. *Brown*, 53 Id. 66; *People* v. *Johnson*, 57 Id. 571. If he testifies, he may be impeached as other witnesses may be: *People* v. *Beck*, 58 Id. 212, 214; see sec. 1323, note.

Competency of: Secs. 1321, note, 1323, note.

Credibility of.—The jury are the exclusive judges of the credibility of witnesses: Code Civ. Proc., sec. 2061; *People* v. *Eckert*, 16 Cal. 110; *People* v. *Hicks*, 53 Id. 354; *People* v. *Sprague*, Id. 491. This applies to the credibility of an accomplice, as well as of other witnesses: *People* v. *Gibson*, Id. 601. A party who calls a person as his witness indorses his credibility, and is concluded by his statement: *People* v. *Anderson*, 26 Id. 130. When the defendant becomes a witness in his own behalf, the jury are to judge of his credibility the same as of

other witnesses. In such a case, an instruction that, "in considering the weight and effect to be given his [defendant's] evidence, in addition to noticing his manner and the probability of his statements, taken in connection with the evidence in the cause, you should consider his relation and situation under which he gives the testimony, the consequences to him relating from the result of this trial, and all the inducements and temptations which would ordinarily influence a person in his situation. You should carefully determine the amount of credibility to which his evidence is entitled; if convincing and carrying with it a belief in its truth, act upon it; if not, you have a right to reject it"—is proper: *People* v. *Cronin*, 34 Id. 192; *People* v. *Nichols*, 7 Pac. C. L. J. 436; see sec. 1323, note.

Cross-examination of.—The examination of a witness by the party producing him is denominated the direct examination; the examination of the same witness upon the same matter by the adverse party, the cross-examination: Sec. 2045, Code Civ. Proc.. If the testimony of a witness is contradictory or confused, the greatest latitude should be allowed in cross-examination: *People* v. *Williams*, 18 Cal. 187. Disclosing part of a conversation entitles the opposite party to all: *People* v. *Strong*, 30 Id. 151; *People* v. *Murphy*, 39 Id. 52. For the purpose of impeaching a witness, he may be asked on cross-examination whether he has not on a former occasion given a different account of the matter: *People* v. *Robles*, 29 Id. 421. The object of such examination is for the purpose of testing the credibility of the witness and the truth of his testimony: *People* v. *Bullard*, 51 Id. 551. It should be confined to matters which have been elicited on direct examination: *People* v. *Miller*, 33 Id. 99. A defendant who offers himself as a witness in his own behalf is subject to the same rules of cross-examination as other witnesses: *People* v. *McGungill*, 41 Id. 429; *People* v. *McCauley*, 45 Id. 146; *People* v. *Russell*, 46 Id. 121. He may be cross-examined by the prosecution respecting an occurrence about which he has testified in chief, for the purpose of showing express malice, and in order to lay a foundation to impeach his credibility: *People* v. *Dennis*, 39 Id. 625. See sec. 1323, note. Recalling a witness for further cross-examination rests largely in the discretion of the trial court: *People* v. *Parton*, 49 Id. 632; *People* v. *Keith*, 50 Id. 137. A witness cannot be cross-examined as to any fact which is collateral and irrelevant to the issue, merely for the purpose of contradicting him by other evidence, if he should deny it: *People* v. *McKeller*, 53 Id. 65; *People* v. *Bell*, Id. 119. But when the question asked calls for a response in respect to a matter which the party asking the question would have a right to prove as an independent fact, this rule does not apply: *People* v. *Chin Mook Sow*, 51 Id. 597. See sec. 1321, note.

Defendant as a witness: Secs. 688, note, 1323, note.

Discrediting one's own witness.—When a witness who is called by a party does not testify to what the party expected, but does not give testimony against him, the party calling the witness is not permitted to prove that the witness had made statements to others, which, if testified to on the trial, would have tended to make out his case: *People* v. *Jacobs*, 49 Cal. 384. But see Code Civ. Proc., sec. 2049.

Impeachment of.—The party producing a witness is not allowed to impeach his credit by evidence of bad character; but he may contradict him by other evidence, and may also show that he has made at other times statements inconsistent with his present testimony, as provided in section 2052: Sec. 2049, Code Civ. Proc.

A witness may be impeached by the party against whom he was called, by contradictory evidence, or by evidence that his general reputation for truth, honesty, or integrity is bad, but not by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he has been convicted of a felony: Sec. 2051, Code Civ. Proc.

A witness may also be impeached by evidence that he has made at other times statements inconsistent with his present testimony; but before this can be done the statements must be related to him, with the circumstances of time, places, and persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing, they must be shown to the witness before any question is put to him concerning them: Sec. 2052, Code Civ. Proc.

Impeaching adverse witness.—Particular wrongful acts cannot be proved for the purpose of impeaching an adverse witness, but the evidence must be confined to the general reputation of the witness for truth, honesty, or integrity: *People* v. *Methvin*, 53 Cal. 68. The question of veracity is one of fact for the jury, and it is not essential to the successful impeachment of a witness that the impeaching witnesses should testify that they would not believe him under oath: *People* v. *Tyler*, 35 Id. 553. A witness called to impeach another may answer that he would not believe such other under oath: *Stevens* v. *Irwin*, 12 Id. 306. The court may in its discretion limit the number of impeaching witnesses: *People* v. *Murray*, 41 Id. 67. If the defendant in a criminal case introduces evidence tending to show that an adverse witness was suborned and has been paid for his testimony, the good character of such witness for truth and veracity may be shown in rebuttal: *People* v. *Ah Fat*, 48 Id. 61. Prior to the adoption of the codes, to discredit a witness by a conviction, it was necessary to produce the record to show such conviction. To ask him whether or not he was so convicted would not have been the best evidence in degree, and would therefore have been objectionable: *People* v. *Reinhart*, 39 Id. 449; *People* v. *Melvane*, Id. 614; *People* v. *McDonald*, Id. 697. Under section 2051, Code Civ. Proc., a witness may be asked if he has been convicted of a felony, and the record may also be introduced to prove that fact: *People* v. *Chin Mook Sow*, 51 Id. 600. So a defendant who becomes a witness in his own behalf may be asked on cross-examination as to whether he has not been previously convicted of a felony, notwithstanding he has admitted by plea that he has been so convicted: *People* v. *Johnson*, 7 Pac. C. L. J. 168. See "Impeachment of Witness," sec. 1321, note.

Contradictory statements.—Where the credibility of a witness is to be assailed by proof of something he may have said elsewhere, contradictory of his testimony as given, the witness must first be inquired of concerning it, and the time, place, and person involved in the sup-

posed contradiction must be called to his attention: *People* v. *Devine*, 44 Cal. 452. When this is done, his credit may be impeached by proof of contrary statements; *People* v. *Lawrence*, 21 Id. 368; *People* v. *Robles*, 29 Id. 421; *People* v. *Nyland*, 41 Id. 129; *People* v. *Donovan*, 43 Id. 162; *People* v. *Doyell*, 48 Id. 85.

Husband or wife as witness: Sec. 1322, note; Code Civ. Proc., sec. 1881, subd. 1.

Memory of witness: Sec. 1321 in note.

Opinions of witnesses: Sec. 1321 in note.

Privilege of witness: Sec. 1321 in note.

Separation and exclusion of witnesses. In general the court will, on the application of either of the parties, direct that all the witnesses but the one under examination shall leave the court: Roscoe on Ev. 162; *People* v. *Duffy*, 1 Wheel. 123. And the right of either party to require the unexamined witness to retire may be exercised at any period of the case: Id. What is sometimes called placing witnesses under the rule is to call them all to the bar of the court, swearing them, and then giving them the charge not to remain in court while any one is being examined, under penalty of contempt. Witnesses may be excluded while one is being examined, on motion, in the sound discretion of the court: Sec. 2043, Code Civ. Proc.; *People* v. *Garnett*, 29 Cal. 622; *People* v. *Sprague*, 53 Id. 491. A witness who remains in the court-room after an order excluding him may still be a witness, but he is liable to be punished for a contempt of court: *People* v. *Boscovitch*, 20 Id. 436; see sec. 867, note.

An Act to authorize the appointment of an interpreter of the Italian language and dialects, in criminal proceedings, in cities and cities and counties of one hundred thousand inhabitants.

[Approved March 12, 1885; 1885, 108.]

Interpreter of Italian.

SECTION 1. In all cities and cities and counties of over one hundred thousand inhabitants, where an interpreter of the Italian language is necessary, it shall be the duty of the mayor and police judge of such city, or city and county, and of the superior judge of said city and county, or of the county in which said city is situated, or where there are more judges than one, then it shall be the duty of the presiding judge of said superior court, and the mayor and police judge, to appoint an interpreter of the Italian language, who shall be an Italian, and who must also be able to interpret the Italian dialects into the English language, to be employed in criminal proceedings, when necessary, in said cities, or cities and counties.

Salary.

SEC. 2. The said interpreter shall receive a salary of one thousand five hundred dollars per annum, which shall be paid out of the general fund of such city, or city and county.

SEC. 3. This act shall not repeal any act heretofore made and now in force for the appointment of interpreters, except so much of any act which may conflict with this act in the appointment of Italian interpreters.

SEC. 4. This act shall take effect and be in force from and after its passage.

1103. *Evidence on trial for treason.*

SEC. 1103. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act, or upon confession in open court; nor can evidence be admitted of an overt act not expressly charged in the indictment or information; nor can the defendant be convicted unless one or more overt acts be expressly alleged therein. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 22 (*Ban. ed.* 168); *took effect immediately.*]

Treason: Const. U. S., art. 3, sec. 3, subd. 1; Const. Cal., art. 1, sec. 20; Code Civ. Proc., sec. 1968.

Evidence.—The two witnesses required to prove treason refers to the proof upon the trial, and not to an examination before a preliminary magistrate or grand jury: Charge on the Law of Treason, 2 Wall. jun. 138. A co-defendant in an indictment not on trial, if not joined also in the one being tried, may testify for the defendant in this one: *United States* v. *Hanway*, Id. 139.

1104. *Evidence on trial for conspiracy.*

SEC. 1104. Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 22 (*Ban. ed.* 168); *took effect immediately.*]

Conspiracy.—At the common law, if two or more persons conspired together to do a wrong this conspiring was an act rendering the transaction a crime, without any step taken in pursuance of the conspiracy: 1 Bish. Crim. L., sec. 432. The offense was complete without an overt act: *Commonwealth* v. *Judd*, 2 Mass. 329; S. C., 3 Am. Dec. 54; *Commonwealth* v. *Tibbetts*, 2 Mass. 536, 538; *People* v. *Mather*, 4 Wend. 229; S. C., 21 Am. Dec. 122; *State* v. *Buchanan*, 5 Har. & J. 317; S. C., 9 Am. Dec. 534. In this state no agreement amounts to a conspiracy, except to commit a felony upon the person of another, or to commit arson, or burglary, unless

some act, beside such agreement, be done to effect the object thereof, by one or more of the parties to such agreement: Sec. 184, note.

Indictment.—A conspiracy, as regarded at the common law, is sufficiently charged in an indictment if it appeared therefrom: 1. A combining of two or more minds, which is all that is necessary to be said about the act; and 2. The purpose of the combination, that is, the intent, which should be so set out in terms to show, on the face of the allegation, that the combining to accomplish it is indictable: 1 Bish. Crim. Proc., sec. 204. The allegation is that the defendants, at a time and place unlawfully and wickedly, or falsely, and maliciously, did conspire, combine, confederate, and agree together to, etc., stating the purpose of the conspiracy: Id., sec. 205; 3 Ch. Crim. L. 1145. In addition to such matter, an indictment in this state must allege one or more overt acts, which must be proved at the trial, except where the indictment charges a conspiracy to commit a felony upon the person of another, or to commit arson, or burglary, in which cases such allegation is unnecessary.

Evidence of.—A conspiracy may be proved either expressly, or by circumstantial evidence from which the jury may infer it. General evidence of the conspiracy charged may be received in the first instance, but the defendant will not be affected thereby unless it is afterwards brought home to him, or to an agent employed by him: 2 Archb. Crim. Pl. 1843; *Queen's Case*, 2 Brod. & B. 302; *Rex* v. *Hammond*, 2 Esp. 719. "Acts performed by the defendants separately, yet tending to the one end, together with the relation of the doers to one another, and any other explanatory facts, may be shown, as justifying the inferring a conspiracy whence they proceeded:" 2 Bish. Crim. Proc., sec. 227. A connection must appear, however, between such acts, or they will be inadequate: Id.; see *United States* v. *Cole*, 5 McLean, 513, 601; *Regina* v. *Murphy*, 8 Car. & P. 297; *Regina* v. *Frost*, 9 Id. 129; *Regina* v. *Blake*, 6 Q. B. 126. After proof that the defendant and others acted in concert about the particular thing in question, all with a common object, the declarations and acts of any one of the others during the time of the transaction, whether present or absent, are admissible against the defendant: 1 Bish. Crim. Proc., sec. 1248; Code Civ. Proc., sec. 1870, subd. 6; *People* v. *Cotta*, 49 Cal. 166; *People* v. *Estrado*, Id. 171; *People* v. *Geiger*, Id. 643. But declarations made after the transaction is ended are not: *State* v. *Duncan*, 64 Mo. 262; *State* v. *Butler*, 29 La. Ann. 354; see *People* v. *Stanley*, 47 Cal. 113; *People* v. *Anthony*, 5 Pac. C. L. J. 265; *People* v. *Collins*, 64 Cal. 293.

1105. *When burden of proof shifts in trials for murder.*

SEC. 1105. Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

Stats. 1850, 229, sec. 37.

Manslaughter: Sec. 192, note.

Excusable homicide: Sec. 195, note.

Justifiable homicide: Secs. 196, note, 197, note.

Shifting of burden of proof.—In *People* v. *Flahave*, 58 Cal. 249, the court in instructing the jury substituted the words "sufficiently shows" for "tends to show," and it was held not error. See erroneous instruction under this section: *People* v. *Smith*, 59 Id. 601, 607. That mitigating circumstances or those justifying or excusing the killing must be shown by a preponderance of evidence, see *People* v. *Hong Ah Duck*, 61 Id. 388, 396; *People* v. *Raten*, 63 Id. 421. In other crimes than homicide a different rule exists: *People* v. *Cheong Foon Ark*, 61 Id. 527.

1106. *Evidence on a trial for bigamy.*

SEC. 1106. Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate, or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when the second marriage took place out of this state, proof of that fact, accompanied with proof of cohabitation thereafter in this state, is sufficient to sustain the charge.

Stats. 1861, 415, sec. 1.

Bigamy, proof of.—In prosecutions for bigamy, an actual marriage must be proved. It cannot be inferred from the mere circumstance of cohabitation. The effect of this section is to dispense with the necessity for introducing documentary or record evidence to prove the marriage: *Case* v. *Case*, 17 Cal. 598; *People* v. *Anderson*, 26 Id. 129.

See the note to *Cameron* v. *State*, 48 Am. Dec. 115, for discussion of the evidence requisite to prove marriage in bigamy and criminal conversation.

Bigamy defined: Sec. 281, *ante*.

1107. *Evidence upon a trial for forging bank bills, etc.*

SEC. 1107. Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by

the charter or act of incorporation, but it may be proved by general reputation; and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

Stats. 1850, 229, sec. 79.

Variance in forgery.—Where the word "shipped" was spelled "shiped" in the original, "said" was spelled "saide," the spelling them correctly in the indictment setting out a copy of the instrument does not raise a material variance: *People* v. *Cummings*, 57 Cal. 88.

Incorporation, proof of.—An averment in an indictment that a company is a corporation may be proved by showing that such company is acting as a *de facto* corporation, and doing business as such: *People* v. *Frank*, 28 Cal. 507; *People* v. *Hughes*, 29 Id. 257; *People* v. *Schwartz*, 32 Id. 160; *People* v. *Ah Sam*, 41 Id. 645; *People* v. *Barric*, 49 Id. 342.

1108. *Evidence upon trial for abortion and seduction.*

SEC. 1108. Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of twenty-five years, for the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom the offense was committed, unless she is corroborated by other evidence.

Abortion, evidence upon trial for.—Where the only evidence is the testimony of the woman on whom the attempt to produce an abortion is made, it must be corroborated in respect to some of the material facts which constitute a necessary element of the crime. Any evidence, in addition to that of such witness, tending to show a criminal intent on the part of the defendant would be a sufficient corroboration of her testimony to bring the case within the statute, although it might differ from hers as to the particular method employed to produce abortion: *People* v. *Josselyn*, 39 Cal. 393.

1109. *Evidence on a trial for selling, etc., lottery-tickets.*

SEC. 1109. Upon a trial for the violation of any of the provisions of Chapter IX., Title IX., Part I., of this code, it is not necessary to prove the existence of any lottery in which any lottery-ticket purports to have been issued, or to prove the actual signing of any such ticket or share, or pretended ticket or share, of any pretended lottery, nor that any lottery-ticket, share, or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager; but in all cases proof of the sale, furnishing, bartering, or procuring of any ticket, share, or interest therein, or of any instrument purporting to be a ticket, or part or share of any such ticket, is evidence that such share or interest was signed and issued according to the purport thereof.

For chapter 9, title 9, part 1, above referred to, see *ante*, sec. 319.
Stats. 1861, 229, sec. 12.

1110. *Evidence of false pretenses.*

SEC. 1110. Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property, or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language, unaccompanied by a false token or writing, unless the pretense, or some note or memorandum thereof be in writing, subscribed by or in the handwriting of the defendant, or unless the pretense be proven by the testimony of two witnesses, or that of one witness and corroborating circumstances; but this section shall not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property.

Stats. 1862, 53, sec. 1.

1111. *Conviction cannot be had on uncorroborated testimony of accomplice.*

SEC. 1111. A conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence which in itself, and without the aid

of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, if it merely shows the commission of the offense, or the circumstances thereof.

Accomplice's testimony, uncorroborated, not sufficient to convict.—A defendant cannot be convicted of a criminal offense upon the testimony of an accomplice, unless there is other evidence which of itself, and without the aid of the testimony of the accomplice, tends in some degree to connect the defendant with the commission of the offense: *People* v. *Garnett*, 29 Cal. 622; *People* v. *Ames*, 39 Id. 403; *People* v. *Melvane*, Id. 614; *People* v. *Warren*, Id. 661; *People* v. *Cleveland*, 49 Id. 577; *People* v. *Curlee*, 53 Id. 604. For a case of sufficient corroborating evidence, see *People* v. *Rolfe*, 61 Id. 541. The corroborating evidence is not sufficient if it merely tends to raise a suspicion of the guilt of the accused: *People* v. *Thompson*, 50 Id. 480. But it need not tend to establish the precise facts testified to by the accomplice. It is sufficient if it tends to connect the defendant with the commission of the crime: *People* v. *Cloonan*, Id. 449. A person who has no knowledge of a crime until after it has been committed, and who simply purchases property that has been stolen, is not an accomplice whose testimony requires corroboration: *People* v. *Barric*, 49 Id. 342. The testimony of a feigned accomplice need not be corroborated: *People* v. *Farrell*, 30 Id. 316. Acts of an accomplice to be evidence against an accused must constitute a portion of the *res gestæ*: *People* v. *Stanley*, 47 Id. 114. Statements of an accomplice are not evidence unless given as testimony in the case, or made in defendant's presence, or during the pendency of the criminal enterprise, and in furtherance of its objects: *People* v. *Moore*, 45 Id. 19. The jury are the exclusive judges of the credibility of an accomplice: *People* v. *Gibson*, 53 Id. 601

1112. *Proceedings where evidence discloses higher offense.*

Section 1112, relating to cases where the evidence showed a higher offense than the one charged, was repealed by act of March 12, 1880; Amendments 1880, 6 (Ban. ed. 27); took effect from passage.

1113. *Court may discharge jury when it has not jurisdiction, etc.*

SEC. 1113. The court may direct the jury to be discharged where it appears that it has not jurisdiction of the offense, or that the facts charged do not constitute an offense punishable by law. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 22 (*Ban. ed.* 168); *took effect immediately.*]

Jurisdiction generally: See secs. 777, 794, and notes.

1114. *Proceeding if jury discharged for want of jurisdiction of offense committed out of the state.*

SEC. 1114. If the jury be discharged because the court has not jurisdiction of the offense charged, and it appear that it was committed out of the jurisdiction of this state, the defendant must be discharged. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 22 (*Ban ed.* 169); *took effect immediately.*]

Crime committed out of the state: Sec. 27, subd. 3, and note.
Jurisdiction: See secs. 777, 794, and notes.

1115. *Proceeding in such case, when offense committed in the state.*

SEC. 1115. If the offense was committed within the exclusive jurisdiction of another county of this state, the court must direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his arrest; or if the offense is a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county; and if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a certain time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, to be mentioned in the undertaking; and the clerk must forthwith transmit a certified copy of the indictment or information, and of all the papers filed in the action, to the district attorney of the proper county, the expense of which transmission is chargeable to that county. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 22 (*Ban. ed.* 169); *took effect immediately.*]

1116. *Same.*

SEC. 1116. If the defendant is not arrested on a warrant from the proper county, as provided in section eleven hundred and fifteen, he must be discharged from custody, or his bail in the action is exonerated, or money deposited instead of bail must be refunded, as the case may be, and the sureties in the undertaking, as mentioned in that section, must be discharged. If he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate.

1117. *Proceedings if jury discharged because the facts do not constitute an offense.*

SEC. 1117. If the jury is discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated; or if he has deposited money instead of bail, that the money be refunded to him, unless in its opinion a new indictment or information can be framed upon which the defendant can be legally convicted, in which case it may direct the district attorney to file a new information, or (if the defendant has not been committed by a magistrate) direct that the case be submitted to the same or another grand jury; and the same proceedings must be had thereon as are prescribed in section nine hundred and ninety-eight; provided, that after such order or submission the defendant may be examined before a magistrate, and discharged or committed by him as in other cases. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 23 (*Ban. ed.* 169); *took effect immediately.*]

"As a matter of course, the order and the ground of the order are to made a matter of record:" Commissioners' note.

1118. *When evidence on either side is closed, court may advise jury to acquit.*

SEC. 1118. If, at any time after the evidence on either side is closed, the court deems it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury are not bound by the advice.

Advise an acquittal: See *People* v. *Welch*, 49 Cal. 181.

1119. *View of premises, when ordered, and how conducted.*

SEC. 1119. When, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which must be shown to them by a person appointed by the court for that purpose; and the sheriff must be sworn to suffer no person to speak or communicate with the jury, nor to do so himself, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

Viewing premises by jury.—When a jury is permitted by the court to view the place where an offense is charged to have been committed, or in which any other material fact occurred, no person can be allowed, even by the court, to speak to them on any subject connected with the trial: *People* v. *Green*, 53 Cal. 60. The jury may be permitted to view the place in which the offense is charged to have been committed without the presence of the defendant who is on trial. Such viewing is not any part of the trial within the meaning of the statute requiring the defendant's presence during the trial: *People* v. *Bonney*, 19 Id. 426. But in *Benton* v. *State*, 30 Ark. 328, 348, after an examination of the authorities, it was held that the defendant was entitled to accompany the jury in viewing the premises where the crime is alleged to have been committed: See also *State* v. *Bertin*, 24 La. Ann. 46; *Eastwood* v. *People*, 3 Park. Cr. 25.

Visiting the premises by one of the jurors during the progress of the trial is not such misconduct as will necessitate discharging the jury: *People* v. *Hope*, 62 Cal. 291.

1120. *Knowledge of juror to be declared in court, and he to be sworn as a witness.*

SEC. 1120. If a juror has any personal knowledge respecting a fact in controversy in a cause, he must declare the same in open court during the trial.

If, during the retirement of the jury, a juror declare a fact which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases the juror making the statement must be sworn as a witness and examined in the presence of the parties.

1121. *Jurors may be permitted to separate during trial.*

SEC. 1121. The jurors sworn to try an action may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer. The officer must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to them or communicate with them, nor to do so himself, on any subject connected with the trial, and to return them into court at the next meeting thereof. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 23 (*Ban. ed.* 169); *took effect immediately.*]

Separation of jury.—An order of the court authorizing the sheriff to receive from the jury a sealed verdict, if they should agree during the night, and upon its receipt to allow the jury to separate until the session of the court upon the following morning, cannot afterwards be complained of by the defendant, if he consented thereto: *People* v. *Kelly*, 46 Cal. 356.

1122. *Jury at each adjournment must be admonished, etc.*

SEC. 1122. The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with any one else on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

1123. *Proceedings when juror becomes unable to perform his duties.*

SEC. 1123. If, before the conclusion of the trial, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or afterwards impaneled.

Juror getting sick.—Where a new juror is called to take the place of one that has been taken sick, the trial must begin anew, and "that being so, it follows that the defendant was entitled, after the change had been effected, to all the challenges which the law gave him in the first instance:" *People* v. *Stewart*, 63 Cal. 60, 61.

1124. *Court to decide questions of law arising during trial.*

SEC. 1124. The court must decide all questions of law which arise in the course of a trial.

Questions of law.—A court has no right to submit to the determination of a jury questions of mere law. The pertinency of evidence is a question of law which the court should determine: *People* v. *Ivey*, 49 Cal. 56.

Court must declare the law: Sec. 1093, subd. 6, note.

"An act of the legislature passed between the commission of the crime and the death of the person on whom the crime was perpetrated, which declares all offenses then committed to be punishable under the law in existence at the date of the act, is valid and binding: *People* v. *Gill*, 6 Cal. 637; see also secs. 3, 6, *ante;* and ample note to sec. 1102, *ante*, and cases there cited. The next section makes libel an exception:" Commissioners' note.

1125. *On trial for libel, jury to determine law and fact.*

SEC. 1125. On a trial for libel, the jury has the right to determine the law and the fact. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 23 (*Ban. ed.* 170); *took effect immediately.*]

Same principle: Art. 1, sec. 9, of the constitution.

1126. *In all other cases court to decide questions of law.*

SEC. 1126. On a trial for any other offense than libel, questions of law are to be decided by the court, questions of fact by the jury; and although the jury have the power to find a general verdict, which includes questions of law

as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 23 (*Ban. ed.* 170); *took effect immediately.*]

Charging jury with respect to questions of fact: Sec. 1093, subd. 6, note.

Questions of law: Sec. 1124, note.

Jury bound by instructions, although erroneous.—The jury must receive the law as laid down to them by the court in its instructions. They are not at liberty to disregard the instructions given, although erroneous, and a verdict which is rendered in opposition thereto will be set aside on motion, as "against law:" *Emerson* v. *County of Santa Clara*, 40 Cal. 545; *Armstrong, Adm'r*, v. *Keith*, 20 Am. Dec. 133, note.

1127. *Charging the jury.*

SEC. 1127. In charging the jury, the court must state to them all matters of law necessary for their information. Either party may present to the court any written charge and request that it be given. If the court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused the court must indorse and sign its decision. If part be given and part refused, the court must distinguish, showing by the indorsement what part of the charge was given and what part refused.

Instructions: See also secs. 1093, and note, 1102, and note. In criminal cases instructions should not be given to the jury unless founded upon some evidence that has been adduced at the trial. They should be predicated upon some theory, logically deducible from at least some portion of the testimony: *People* v. *Roberts*, 6 Cal. 214; *People* v. *Graham*, 21 Id. 261; *People* v. *Sanchez*, 24 Id. 17; *People* v. *Murphy*, 47 Id. 103; *People* v. *Estrado*, 49 Id. 171; *People* v. *Vasquez*, Id. 560; *People* v. *Turley*, 50 Id. 469; *People* v. *Atherton*, 51 Id. 495; *People* v. *Cummings*, 57 Id. 88; *People* v. *Hunt*, 59 Id. 435; *People* v. *De Silvera*, Id. 592; *People* v. *Gilbert*, 60 Id. 108, 111. Alleged errors upon merely abstract propositions of law, in giving instructions, will not be reviewed: *People* v. *Walsh*, 43 Id. 447. A defendant who seeks a reversal of judgment on the ground of error in giving or refusing instructions must have sufficient of the facts in the case set forth in the record to show that the instructions requested are pertinent: *People* v. *Smith*, 57 Id. 130; *People* v. *Dick*, 32 Id. 213. "If an instruction in a case is asked which refers to facts which there is no evidence to prove, it is not error to refuse to give it, and if given, although in fact erroneous in the abstract, it will not be regarded as an error for which the judgment will be reversed, unless it be manifest that the jury were misled by it to the prejudice of the defendant:" *People* v. *Cochran*, 61 Id. 548, 551. But if the action of the court in giving or refusing such instructions is erroneous under any possible state of facts, the appellate court will review it, notwithstanding there is no evidence in the record: *People* v. *Dick*, 32 Id. 213; *People* v. *Torres*, 38 Id. 141; *People* v. *Padillia*, 42 Id. 535. If an instruction asked for by the defendant properly states the law, it should be given in the very words asked: *People* v. *Williams*, 17 Id. 142. But if already given, it need not be repeated: *People* v. *Kelly*, 28 Id. 424; *People* v. *Strong*, 30 Id. 154; *People* v. *Murray*, 41 Id. 66; *People* v. *Hope*, 62 Id. 291; *People* v. *Hong Ah Duck*, 61 Id. 394. Nor is the court obliged to give the reason or history of the law which is given to the jury: *People* v. *Ramirez*, 56 Id. 533, 536. When refused because similar instructions are already given, the court should be careful to place its refusal upon such ground or the jury may be misled thereby: *People* v. *Hurley*, 8 Id. 390; see *People* v. *Ramirez*, 13 Id. 172; *People* v. *King*, 27 Id. 507. But the omission to mark instruction refused because already given, if an error, is an immaterial one, not prejudicing defendant: *People* v. *Ramirez*, 56 Id. 533, 538. A defendant cannot complain of an instruction unless he has been injured thereby: *People* v. *Nichol*, 34 Id. 211; *People* v. *Ah Kong*, 49 Id. 6; *People* v. *De Silvera*, 59 Id. 592; *People* v. *Messersmith*, 61 Id. 246. Neither can he complain of the failure of the court to instruct the jury upon a particular point if he fails to ask for an instruction upon that point: *People* v. *Haun*, 44 Id. 96; *People* v. *Ah Wee*, 48 Id. 236.

Whole charge to be considered.—In reviewing the instructions of the lower court, the whole charge will be taken together, and if without straining any portion of the language it harmonizes as a whole, and fairly and correctly presents the law bearing on the issues tried, the appellate court will not disturb the judgment, because a separate instruction does not contain all the conditions and limitations, which are to be gathered from the entire text: *People* v. *Bagnell*, 31 Id. 409; *People* v. *Doyell*, 48 Id. 85; *People* v. *Welch*, 49 Id. 174; *People* v. *Nelson*, 56 Id. 77, 81; *People* v. *Gray*, 61 Id. 164, 182; *People* v. *Morine*, Id. 370; *People* v. *De Silvera*, 59 Id. 59; *People* v. *Hurtado*, 63 Id. 289, 292; *People* v. *McDowell*, 64 Id. 467; *People* v. *Core*, 59 Id. 390.

Miscellaneous matters.—Courts may require instructions that the parties desire to have given to be handed to them before the argument of the case commences; but if it becomes necessary from the course of the argument to give other instructions than those requested to prevent injustice, they should be given: *People* v. *Sears*, 18 Cal. 635. Irrelevant portions of an instruction may be stricken out: *People* v. *Cotta*, 49 Id. 166. It is unnecessary to charge the jury that they are the exclusive judges of the fact: *People* v. *Boggs*, 20 Id. 432.

Contradictory and confused instructions. If the jury are erroneously instructed as to what the law is in one part of the charge, a correct statement of the law in another part does

not cure the error. If contradictory n a material point, a new trial will be granted: *People* v. *Campbell*, 30 Cal. 312; *People* v. *Valencia*, 43 Id. 552; *People* v. *Anderson*, 44 Id. 65; *People* v. *Wong Ah Ngow*, 54 Id. 151; *People* v. *Messersmith*, 57 Id. 575. Uncertain and confused instructions should not be given: *People* v. *Hurley*, Id. 145, containing a statement of the distinction between confused instructions that do and those that do not mislead. That there will be no reversal where a portion of the instruction is meaningless, see *People* v. *Ah Loy*, Id. 566; see *People* v. *Monahan*, 59 Id. 389, for a reversal for confused instructions. And for decisions holding charge sufficient if correct as a whole, see the note to sec. 1258. See also note to sec. 1096.

Instructions as part of the record.—Alleged errors in giving or refusing instructions will not be reviewed unless embodied in a bill of exceptions, or indorsed by the judge, showing the action of the court thereon: *People* v. *Thompson*, 28 Cal. 214; *People* v. *Tetherow*, 40 Id. 286; and see *People* v. *Flahave*, 58 Id. 249, 253, *per* McKinstry, J., in regard to the inefficacy of clerk's insertion in the record of a paper head "Instructions" which are not shown by the court's indorsement to have been given or refused in whole or in part.

Charging jurors upon questions of fact: Sec. 1094, subd. 6, and note.

Oral instructions: Sec. 1094, subd. 6, and note.

Instructions upon insanity: Sec. 26, subd. 3, and note.

Presumption of innocence: Sec. 1096, and note.

1128. *Jury may decide in court or retire in custody of officer—Oath of officers.*

SEC. 1128. After hearing the charge, the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, an officer must be sworn to keep them together in some private and convenient place, and not permit any person to speak to or communicate with them, nor to do so himself, unless by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

Oath of officer in charge of jury: Sec. 1440.

1129. *When defendant on bail appears for trial, he may be committed.*

SEC. 1129. When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court, and he must be committed and held in custody accordingly.

Constitutional.—This section does not violate the right of bail secured by the constitution. *People* v. *Williams*, 59 Cal. 674.

1130. *If district attorney fails to attend, court may appoint.*

SEC. 1130. If the district attorney fails to attend at the trial, the court must appoint some attorney at law to perform the duties of the district attorney on such trial.

District attorney, duties of: Pol. Code, secs. 4256–4258.

Assistant counsel for district attorney.—Whether the district attorney should be allowed associate counsel to aid in the management of a criminal case is a matter resting in the discretion of the trial court, and unless that discretion is abused, the appellate court will not interfere: *People* v. *Blackwell*, 27 Cal. 65.

Argument: Sec. 1093, subd. 5, and note

Number of counsel: Sec. 1095.

Order of argument: Sec. 1095, and note.

1131. *When allegations of embezzlement sustained.*

SEC. 1131. Upon a trial for larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, the allegation of the indictment or information, so far as regards the description of the property, is sustained if the offender be proved to have embezzled or stolen any money, bank notes, certificates of stock, or valuable security, although the particular species of coin or other money, or the number, denomination, or kind of bank notes, certificates of stock, or valuable security, be not proved; and upon a trial for embezzlement, if the offender be proved to have embezzled any piece of coin or other money, any bank note, certificate of stock, or valuable security, although such piece of coin or other money, or such bank note, certificate of

stock, or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 23 (*Ban. ed.* 170); *took effect immediately.*]

Proof of money stolen.—It is not necessary to justify a verdict of guilty of larceny, that the prosecution should prove that money stolen answered the description contained in the information. Under this section, strict proof of the character of the money stolen is unnecessary: *People* v. *Nelson*, 56 Cal. 77, 80.

CHAPTER III.

CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

1135. *Room and accommodations for the jury after retirement, how provided.*

SEC. 1135. A room must be provided by the supervisors of each county for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights, and stationery. If the supervisors neglect, the court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge.

Jury expenses: See Pol. Code, sec. 4344, subd. 3.

1136. *Accommodations for jury when kept together.*

SEC. 1136. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by the sheriff, at the expense of the county, with suitable and sufficient food and lodging.

1137. *What papers the jury may take with them.*

SEC. 1137. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them the written instructions given, and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

Jury may take, what.—"It heretofore rested in the discretion of the court to permit the jury to take the instructions with them to the jury-room. It was frequently cause for their return to inquire in regard to the instructions; hence the necessity and propriety of the change:" Commissioners' note. As a general rule, the jury cannot, without the permission of the court, take with them, upon retiring to deliberate, any papers or books which have been introduced in evidence upon the trial: *Pound* v. *State*, 43 Ga. 88, 140; *Newkirk* v. *State*, 27 Ind. 1; *State* v. *Smith*, 6 R. I. 33. Whether a violation of this rule will be such error as will vitiate the verdict depends upon the circumstances of each particular case. Where papers which had been introduced in evidence upon the trial were taken by the jury to their room inadvertently, without permission, but it did not appear that any use had been made of them, a new trial was refused: *Bersch* v. *State*, 13 Ind. 434; see *People* v. *Page*, 1 Idaho T. 114. But where the jury were furnished by the sheriff with a volume of Bishop's Criminal Law, without the consent of the defendant or permission of the court, a new trial was granted: *Newkirk* v. *State*, 27 Ind. 1. So where they were furnished with a copy of the laws of the state where the trial was had, a new trial was granted: *State* v. *Smith*, 6 R. I. 33. By this section permission is given to the jury to take with them all papers, except depositions, which have been received in evidence; also the written instructions given, and such notes of the testimony as they may have taken themselves. It is error, however, to permit the jury to take with them written instructions which the court has refused to give; but if such refused instructions are asked by and are favorable to the defendant, the fact that the jury takes them cannot prejudice him: *People* v. *Cummings*, 57 Cal. 88. The section is confined to papers introduced in evidence, and is permissive, not mandatory, leaving the matter to the discretion of the court: *People* v. *Cochran*, 61 Id. 548. A diagram used for the purposes of illustration does not come within the purview of this section: Id.

1138. *Jury, after retiring, may return for information.*

SEC. 1138. After the jury have retired for deliberation, if there be any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon being brought into court, the information required must be given in the presence of, or after notice to, the district attorney, and the defendant or his counsel, or after they have been called. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 445; *took effect July* 1, 1874.]

Jury must return for information.—It is the duty of the jury, if there is any disagreement between them as to the testimony, or if they desire information upon any point of law arising in the cause, to return into court for the required information: *People* v. *Hersey*, 53 Cal. 574. If they desire to be further instructed as to the law of the case, the court must instruct them in writing, or, if orally, in the presence of the phonographic reporter. To orally instruct them in the latter's absence is error *per se:* Id. Neither should such instructions be given in the absence of the defendant's attorney, although the defendant himself is present, without proof of notice to him of the return of the jury: *People* v. *Trim*, 37 Id. 274. The latter decision was made under section 408 of the criminal practice act, which provided that notice should be given to "defendant and his counsel:" Hittell's Gen. Laws, 1995.

1139. *If juror after retirement becomes sick, etc., jury to be discharged.*

SEC. 1139. If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

Discharge of jury not an acquittal.—The discharge of the jury for such causes as are specified in this section does not amount to an acquittal of defendant: *Ex parte McLaughlin*, 41 Cal. 212; *People* v. *Cage*, 48 Id. 323; see sec. 687, note. The power conferred upon the court, however, to discharge a jury without the defendant's consent, is not an absolute, uncontrolled discretionary power. It must be exercised in accordance with established legal rules, and a sound legal discretion in the application of such rules to the facts and circumstances of each particular case, and in this state is subject to review by an appellate court: *Ex parte McLaughlin*, 41 Cal. 219.

1140. *Not to be discharged for any other cause, unless there is no reasonable probability that they can agree.*

SEC. 1140. Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict and rendered it in open court, unless by consent of both parties, entered upon the minutes, or unless, at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree.

Acquittal: Sec. 687, note.
Jeopardy: Sec. 687, note.
Consent of both parties.—The jury in a criminal case may be discharged by the consent of both parties entered in the minutes, although they have not agreed upon a verdict: *People* v. *Webb*, 38 Cal. 467. Such discharge does not amount to an acquittal of the defendant: *Ex parte McLaughlin*, 41 Id. 212; *People* v. *Cage*, 48 Id. 323.

1141. *When jury discharged or prevented from giving a verdict, cause to be again tried.*

SEC. 1141. In all cases where a jury is discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged during the progress or the trial, or after the cause is submitted to them, the cause may be again tried. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 24 (*Ban. ed.* 170); *took effect immediately.*]

Jeopardy: Sec. 687, and note.

1142. *Court may adjourn during absence of jury, but deemed open for all purposes connected with cause.*

SEC. 1142. While the jury are absent, the court may adjourn from time to time, as to other business, but it must nevertheless be open for every purpose

connected with the cause submitted to the jury until a verdict is rendered or the jury discharged.

Holiday.—A jury may be discharged on Washington's birthday for not agreeing: *People* v. *Soto*, 4 West Coast Rep. 46.

1143. *Final adjournment discharging jury.*

Section 1143, relating to the discharge of the jury by the final adjournment of the court, was repealed by act of March 12, 1880; Amendments 1880, 6 (Ban. ed. 27); took effect from passage.

CHAPTER IV.

THE VERDICT.

1147. *Return of jury.*

SEC. 1147. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the action may be again tried at the same, or another term.

Office of trial jury.—In *Fitzpatrick* v. *Himmelman*, 48 Cal. 588, it was said that it is the office of a trial jury, by their verdict, whether general or special, to find the facts in issue; that with the legal effect of those facts, as resulting in a judgment in favor of the one party or the other, they have no concern whatever. A juror may at the last moment dissent from the verdict as presented, but his dissent should proceed upon the question of fact determined by the verdict. He is not at liberty to dissent merely because he mistook the legal effect of his verdict, or ascertains from a remark by the court that the judgment rendered on the verdict will be other than he had anticipated.

Failure to call names of jury.—Where the verdict is received without calling the names of the jury, the omission to call the names is an irregularity which does not prejudice the defendant, if in fact the jury were all present, and declared the verdict: *People* v. *Rodundo*, 44 Cal. 541.

1148. *Appearance of defendant.*

SEC. 1148. If charged with a felony, the defendant must, before the verdict is received, appear in person. If for a misdemeanor, the verdict may be rendered in his absence. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 24 (*Ban. ed.* 170); *took effect immediately.*]

Verdict rendered in defendant's absence. Where defendant, who was indicted for a felony, was absent when the jury rendered a verdict of guilty, but returned immediately thereafter, and before the jury was discharged knew what the verdict was, and had an opportunity to demand a polling of the jury, the verdict was held not invalidated thereby: *People* v. *Miller*, 33 Cal. 99. But where the verdict is received and recorded, and the jury discharged while defendant is not personally present, a new trial will be granted: *People* v. *Beauchamp*, 49 Id. 41. The defendant is entitled to be present at the rendition of the verdict, and is also entitled to be present when, if the jury cannot agree, the court discharges them. In the latter case, if the defendant is not present, it is, in law, an acquittal: *State* v. *Wilson*, 50 Ind. 487. See generally, upon the right of the defendant to be present when the verdict is rendered, *Beaumont* v. *State*, 1 Tex. App. 533; *State* v. *Bray*, 67 N. C. 283; *State* v. *Epps*, 76 Id. 55; *State* v. *Spores*, 4 Or. 198; *Finch* v. *State*, 53 Miss. 363.

If the defendant runs away pending the trial the jury may be discharged, and the prisoner will not be deemed to have been in jeopardy—the trial, for grand larceny, requiring his presence: *People* v. *Higgins*, 59 Cal. 357.

Judgment in defendant's presence: See sec. 1193.

1149. *Manner of taking verdict.*

SEC. 1149. When the jury appear they must be asked by the court, or clerk, whether they have agreed upon their verdict, and if the foreman answers in the affirmative, they must, on being required, declare the same.

Manner of taking verdict.—In *People* v. *Nichols*, 62 Cal. 518, the verdict was handed to the clerk, and recorded before the jury were asked if it was their verdict. This, although a palpable irregularity, was held not to have prejudiced the defendant, and the supreme court would not reverse.

1150. *Verdict may be general or special.*

SEC. 1150. The jury may render a general verdict, or, when they are in doubt as to the legal effect of the facts proved, they may, except upon a trial for libel,

find a special verdict. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 24 (*Ban. ed.* 171); *took effect immediately.*]

General verdict: Sec. 1151, note.

Special verdict.—It is improper for the court to direct the jury to render a special verdict, but the court should, upon request of either party, direct the jury that they have the discretion to render either a general or special verdict: *People* v. *Antonio*, 27 Cal. 404.

Verdict of guilty.—A general verdict of guilty means guilty of all that the indictment sufficiently alleges: *People* v. *Magellones*, 15 Cal. 26; *State* v. *Jones*, 69 N. C. 364; *State* v. *Nowlan*, 64 Me. 531; *Lovell* v. *State*, 45 Ind. 550. If informal, the court will nevertheless give effect to it, whether for or against the defendant: *People* v. *McCarty*, 48 Cal. 557; *Arnold* v. *State*, 51 Ga. 144; *Bloomhuff* v. *State*, 8 Blackf. 205. A verdict of guilty upon one count, and silent upon others, is an acquittal upon such others: *State* v. *Watson*, 63 Me. 128; *Guenther* v. *People*, 24 N. Y. 100. If a crime is divided into degrees, the jury should find the degree of the crime of which the defendant is guilty; a general verdict in such a case is insufficient: *People* v. *Coch*, 53 Cal. 627; *People* v. *Ah Gow*, Id. 628. Surplusage in a verdict does not vitiate it, but it may be rejected: *People* v. *Ah Kim*, 34 Id. 189; *Bittick* v. *State*, 40 Tex. 117; *McEntee* v. *State*, 24 Wis. 43; but if a verdict is uncertain, no valid judgment can be rendered upon it: *State* v. *Coon*, 18 Minn. 518. As where it fails to show which of two defendants is meant to be convicted: *Favor* v. *State*, 54 Ga. 249; or on which of two counts a conviction is: *Campbell* v. *Regina*, 1 Cox C. C. 269; *Day* v. *People*, 76 Ill. 380; but a verdict which finds "the 'defendances' guilty as charged in the 'inditsement,'" is not uncertain: *People* v. *Sepulveda*, 7 Pac. C. L. J. 688; but where there are two defendants, and the verdict reads, "We find the defendant guilty as charged in the indictment," it is fatally irregular: *People* v. *Sepulveda*, 59 Cal. 342, in bank. A verdict may be amended so as to make it meet the requirements of the law, at any time while the jury is before it and under its control: *People* v. *Jenkins*, 56 Id. 4. "Guilty as charged" is a good verdict on a prosecution for grand larceny: *People* v. *Whiteley*, 64 Id. 211; *People* v. *De Cleer*, 60 Id. 382; *People* v. *Gilbert*, Id. 180. Informality in the verdict does not vitiate: *People* v. *Gilbert*, 57 Id. 96.

Acquittal.—A verdict finding a person guilty who is not named in the indictment is an acquittal of the defendant: *People* v. *Ah Ye*, 31 Cal. 451; but where the defendant was indicted by one name, and, upon arraignment, disclosed another as his true name, under which the prosecution was conducted, a verdict of guilty, in which the original title of the cause was prefixed, is sufficient: *People* v. *Ah Kim*, 34 Id. 189. See, as to verdict of acquittal being an estoppel, *People* v. *Frank*, 28 Id. 507.

Sealed verdict.—An order of the court, authorizing the sheriff to receive from the jury a sealed verdict if they should agree during the night, and, upon its receipt, to allow the jury to separate until the session of the court upon the following morning, is not erroneous, if consented to by the defendant: *People* v. *Kelly*, 46 Cal. 355; see *Commonwealth* v. *Durfee*, 100 Mass. 146; *Stewart* v. *People*, 23 Mich. 63.

Instruction as to form of verdict.—The court may in any case instruct the jury as to form of their verdict; and if it appears from their verdict, as first returned, that they do not know the proper form, it is the duty of the court to instruct them in that regard, and direct them to return the verdict in such form that the judgment of the law may thereupon be pronounced: *People* v. *Ah Gow*, 53 Cal. 628. A court may not direct a jury to find a certain verdict, either special or general, but may, on request, instruct them as to their right to find either: *People* v. *Antonio*, 27 Id. 404.

1151. *General verdict.*

SEC. 1151. A general verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people" or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the ground of variance between the indictment and the proof, the verdict must be "not guilty by reason of variance between indictment and proof." [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 446; *took effect July* 1, 1874.]

General verdict.—Where a general verdict of guilty is rendered, it is a conviction on every material allegation in the indictment; but if the jury intend a conviction of a lesser offense than that charged, but necessarily included in it, they must so specify in the verdict: *People* v. *March*, 6 Cal. 543. Where, however, the indictment charged the defendant with an assault with an intent to commit murder, and the verdict found him guilty of the "indictment as charged to him," it was held that these words conveyed no meaning: *People* v. *Ah Gow*, 53 Id. 627. So if the crime is divided into degrees, the jury should find the degree: *People* v. *Coch*, Id. 627. A verdict which reads "guilty as charged in the indictment" is conclusive as to the venue having been proved, when the indictment charges the venue, and the evidence tends to show the offense to have been committed within the jurisdiction of the trial court: *People* v. *Magallones*, 15 Id. 426. Where the verdict found one guilty who was not named in the indictment, and was silent as to the one named, it was held to be a

finding that the one named in the indictment was not guilty: *People* v. *Ah Ye*, 31 Id. 451. But see *People* v. *Ah Kim*, 34 Id. 189. A verdict, "we, the jury, find that the defendant is guilty of murder in the second degree," is good, both in form and substance: *People* v. *Buckley*, 49 Id. 241. A verdict, "we, the jury in the case of ——, do find a verdict of manslaughter," is sufficient in substance: *People* v. *Perdue*, Id. 425. "We, the jury, find the defendant guilty as indicted, to the sum of ninety dollars," is sufficient in substance where the indictment is for embezzlement: *People* v. *Gilbert*, 57 Id. 96. If there be a plea of not guilty, and also one of former conviction or acquittal, defendant is entitled to a verdict on each plea, and until there is such a verdict, there can be no judgment of conviction: *People* v. *Kinsey*, 51 Cal. 278; *People* v. *Helbing*, 56 Id. 597, and see sec. 1158, *post*. See also *People* v. *Vanard*, 6 Id. 562; *People* v. *English*, 30 Id. 214; *People* v. *Frank*, 28 Id. 507. Defects in an indictment are not cured by a general verdict of guilty: *People* v. *Wallace*, 9 Id. 30.

Specification of degree.—When the offense charged is distinguished into degrees, and the jury, under instructions from the court, simply find the defendant "guilty as charged in the indictment," a new trial will be granted: *People* v. *Coch*, 53 Cal. 627; *People* v. *Campbell*, 40 Id. 137. See *People* v. *Fine*, 53 Id. 263; and *People* v. *Gilbert*, 60 Id. 108, *infra*. And it seems this section applies where the indictment charges the crime generally without specifying the degree: *People* v. *Barnhart*, 59 Id. 381. But if the indictment charges only the lowest degree of the offense, as defined by the code, a general verdict will be sufficient, though it fail to specify the degree: *People* v. *Fisher*, 51 Id. 319. See also *People* v. *Jefferson*, 52 Id. 452. If when the jury return their verdict it does not specify the degree, the court should order them to retire, and return a specific finding of the degree: *People* v. *Marquis*, 15 Id. 38; *People* v. *Bonney*, 19 Id. 426. On an indictment charging the defendant with murder in the second degree, the jury may nevertheless find him guilty of murder in the first: *People* v. *Nichol*, 34 Id. 211. So if the jury find the defendant guilty of murder in the first degree, and do not declare in their verdict that the punishment shall be imprisonment for life, it is the duty of the court to pronounce punishment of death: *People* v. *Welch*, 49 Id. 174.

The above section does not apply to robbery, it not being divided into degrees: *People* v. *Gilbert*, 60 Cal. 108.

The court must not instruct the jury what degree to find; that is for the jury: *People* v. *Hunt*, 59 Cal. 430, citing *People* v. *Gibson*, 17 Id. 283; *People* v. *Woody*, 45 Id. 289.

1152. *Special verdict.*

SEC. 1152. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact as established by the evidence, and not the evidence to prove them, and these conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

Special verdict: See note to sec. 1150.

1153. *Special verdict, how rendered.*

SEC. 1153. The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the court, read to the jury, and agreed to by them, before they are discharged.

1154. *Form of special verdict.*

SEC. 1154. The special verdict need not be in any particular form, but is sufficient if it present intelligibly the facts found by the jury.

1155. *Judgment on special verdict.*

SEC. 1155. The court must give judgment upon the special verdict as follows:

1. If the plea is not guilty, and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted under that indictment, judgment must be given accordingly. But if otherwise, judgment of acquittal must be given;

2. If the plea is a former conviction or acquittal of the same offense, the court must give judgment of acquittal or conviction, as the facts prove or fail to prove the former conviction or acquittal.

1156. *When special verdict defective, new trial to be ordered.*

SEC. 1156. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if

they find the evidence of facts merely, and not the conclusions of fact, from the evidence, as established to their satisfaction, the court must order a new trial.

1157. *Jury to find degree of crime.*

SEC. 1157. Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

1158. *Jury may find upon charge of previous conviction.*

SEC. 1158. Whenever the fact of a previous conviction of another offense is charged in an indictment or information, the jury, if they find a verdict of guilty of the offense with which he is charged, must also, unless the answer of the defendant admits the charge, find whether or not he has suffered such previous conviction. The verdict of the jury upon a charge of previous conviction may be: "We find the charge of previous conviction true," or, "We find the charge of previous conviction not true," as they find that the defendant has or has not suffered such conviction. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 24 (*Ban. ed.* 171); *took effect immediately.*]

Previous conviction.—Where there is a plea of not guilty, and one of former conviction or acquittal, defendant is entitled to a verdict on each plea, and until there is such a verdict, there can be no judgment of conviction: *People* v. *Kinsey*, 51 Cal. 278; *People* v. *Helbing*, 59 Id. 567; *People* v. *Fuqua*, 61 Id. 377; see *People* v. *Delany*, 49 Id. 394. But otherwise where the prior conviction is confessed: *People* v. *Carlton*, 57 Id. 559; *People* v. *Johnson*, Id. 571. In *People* v. *Lewis*, 64 Id. 401, 403, the court say: "We will add here that the answer of defendant, in section 1158 of the Penal Code, is the plea which he tenders on arraignment: *People* v. *King*, Id. 338."

Alleging prior conviction.—Whether this section makes proper an averment of a former conviction in the information, see *People* v. *Boyle*, 64 Cal. 153.

1159. *Jury may convict of lesser offense, or of attempt.*

SEC. 1159. The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 24 (*Ban. ed.* 171); *took effect immediately.*]

Greater contains the less.—The jury may find a defendant guilty of any offense which is necessarily included in the charge in the indictment: *People* v. *Davidson*, 5 Cal. 133; *Ex parte Ah Cha*, 40 Id. 426; *People* v. *Congleton*, 44 Id. 94; *People* v. *Nelson*, 56 Id. 77, 80; *People* v. *Holland*, 59 Id. 364. As to what offenses a defendant may be convicted of, upon an indictment for an assault with intent to murder, see note to sec. 217. Where the defendant is convicted of an offense of a lesser grade than that for which he was indicted, and the lesser offense is included in the greater, the verdict is followed by the same judgment as though the defendant had been indicted for the offense of which he was convicted: *People* v. *English*, 30 Id. 215.

1160. *Verdict as to some defendants, and another trial as to others.*

SEC. 1160. On an indictment or information against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the others may be tried by another jury. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 24 (*Ban. ed.* 171); *took effect immediately.*]

1161. *In what cases court may direct a reconsideration of the verdict.*

SEC. 1161. When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered; but when there is a verdict of acquittal, the court cannot require the jury to reconsider it. If the jury render a verdict which is neither general nor special, the court may direct them to reconsider it, and it cannot be recorded until it is rendered in

some form from which it can be clearly understood that the intent of the jury is either to render a general verdict or to find the facts specially, and to leave the judgment to the court.

Informal verdict.—When the verdict returned by the jury is informal, it is the duty of the court to explain to them its defects, and direct them to put it in proper form: *People* v. *Dick*, 34 Cal. 663; *People* v. *Jenkins*, 56 Id. 4. Informality not vitiating: See *People* v. *Gilbert*, 57 Id. 96.

Until the jury are discharged a verdict may be amended, but not after: *People* v. *Ah Ye*, 31 Cal. 451; *People* v. *Jenkins*, 56 Id. 4. The direction to the jury by the court, that there is an informality in their verdict, and that they shall retire and correct it, need not be in writing: *People* v. *Bonney*, 19 Id. 426.

1162. *When judgment may be given on informal verdict.*

SEC. 1162. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant upon the issue, or judgment is given against him on a special verdict.

Informal verdict, when sufficient.—An informal verdict in a criminal case is sufficient if it can be clearly understood as being a general verdict of guilty or not guilty. Thus, a verdict reading, "We, the undersigned jurors, find a verdict of murder in the second degree," is a good verdict against the defendant of guilty of the crime of murder in the second degree: *People* v. *McCarty*, 48 Cal. 557.

1163. *Polling the jury.*

SEC. 1163. When a verdict is rendered, and before it is recorded, the jury may be polled, at the request of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

Verdict recorded before read.—Although it is irregular for the court to order the verdict to be recorded before it is read or declared, yet it is not such an irregularity as prejudices any substantial right of defendant: *People* v. *Nichols*, 62 Cal. 518.

Polling.—The right of polling the jury may be demanded by either party, or the court may direct it on its own motion: *Harris* v. *State*, 31 Ark. 196; *State* v. *Young*, 77 N. C. 498. The proper time to demand this right is after the publication of the verdict and before the recording of the verdict and discharge of jury: *People* v. *Nichols*, 62 Cal. 518; *Malone* v. *State*, 49 Ga. 211; *Tilton* v. *State*, 52 Id. 478. Each of the jurors should be asked, "Is this your verdict?" *State* v. *Bogain*, 12 La. Ann. 264; *State* v. *John*, 8 Ired. L. 330. If any juror dissent, which he may of right do, the verdict is without validity, and the jury must again be sent out: *United States* v. *Potter*, 6 McLean, 189. But if the dissenting juror agree to the verdict before the jury again retire, such verdict may be recorded without their again retiring: *Gose* v. *State*, 6 Tex. App. 121.

Polling jury: See an article in 1 Crim Law. Mag. 170, giving a sketch of the history and prevalence of this practice.

1164. *Recording the verdict.*

SEC. 1164. When the verdict given is such as the court may receive, the clerk must immediately record it in full upon the minutes, read it to the jury, and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

Failure to record verdict in presence of jury.—Where the verdict is read to the jury, and they are asked if that is their verdict, to which they all assent, the failure to record the written verdict before it is read and assented to, and the jury discharged, is an irregularity; yet, unless it appear that defendant was thereby prejudiced in respect to a substantial right, such failure is not fatal to the judgment: *People* v. *Gilbert*, 57 Cal. 96; *People* v. *Beck*, 58 Id. 212. See *People* v. *Smith*, 59 Id. 601, where it was held to be an immaterial circumstance that the verdict was transcribed into the bound minute and order book after the jury was discharged.

Verdict, how recorded.—Where the verdict, after finding defendant guilty, contained a recommendation of mercy, and the court directed it to be recorded without the recommendation, it was held not to be error: *People* v. *Lee*, 17 Cal. 76.

Verdict should be read, then recorded. Upon the return of the jury into court with their verdict, the court should first read it, or state its contents, and then direct the clerk to record it. Recording it first, however, is an

irregularity which does not affect any substantial right of the defendant, and a judgment rendered upon a verdict recorded first and then read will not be disturbed: *People* v. *Nichols* 62 Cal. 518.

1165. *Defendant, when to be discharged or detained after acquittal.*

SEC. 1165. If judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given, except where the acquittal is because of a variance between the pleading and proof, which may be obviated by a new indictment or information, the court may order his detention, to the end that a new indictment or information may be preferred, in the same manner and with like effect as provided in section eleven hundred and seventeen. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 25 (*Ban. ed.* 171); *took effect immediately.*]

Jeopardy: Sec. 687, and note.
Acquittal on the ground of variance, practice: See *People* v. *Allen*, 61 Cal. 140.

1166. *Proceedings upon general verdict of conviction or a special verdict.*

SEC. 1166. If a general verdict is rendered against the defendant, or a special verdict is given, he must be remanded, if in custody, or if on bail he may be committed to the proper officer of the county to await the judgment of the court upon the verdict. When committed his bail is exonerated, or if money is deposited instead of bail it must be refunded to the defendant.

Stats. 1851, 212.

1167. *Proceedings on verdict of acquittal on ground of insanity.*

SEC. 1167. If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the district attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the state insane asylum. If the jury find the defendant sane, he shall be discharged. [*New section, approved March* 30, 1874; *Amendments* 1873–4, 446; *took effect July* 1, 1874.]

Inquiry into insanity of defendant before trial or after conviction: Secs. 1367 et seq.

CHAPTER V.

BILLS OF EXCEPTION.

1170. *Exceptions may be taken in what cases.*

SEC. 1170. On the trial of an indictment or information, exceptions may be taken by the defendant to a decision of the court:

1. In disallowing a challenge to the panel of the jury, or to an individual juror for implied bias;

2. In admitting or rejecting testimony on the trial of a challenge to a juror for actual bias;

3. In admitting or rejecting testimony, or in deciding any question of law not a matter of discretion, or in charging or instructing the jury upon the law on the trial of the issue. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 25 (*Ban. ed.* 171); *took effect immediately.*]

Exceptions generally.—An exception is an objection upon a matter of law to a decision made, either before or after judgment, by a court, tribunal, judge, or other judicial officer, in an action or proceeding: Code Civ. Proc., sec. 646. It lies to acts and conduct of the court, not of its officers: *People* v. *Torres*, 38 Cal. 142. If the same evidence has been several times objected to and ruled out by the court, there is no need to repeat the objection on every repetition of the question. The court may properly treat the objection as continuing on every repetition of the question, unless something transpires to show that it is waived: *People* v. *Melvane*, 39 Id. 617. If a question, to which an objection is interposed, overruled, and an exception taken, is not answered, no injury can result therefrom: *People* v. *Williams*, 45 Id. 25.

Specific exception must be pointed out.—A general objection to the admissibility of evidence is insufficient. The particular ground upon which it is objected to should be stated: *People* v. *Apple*, 7 Cal. 289; *People* v. *Glenn*, 10 Id. 37; *People* v. *Manning*, 48 Id. 338. And in the supreme court counsel will not be heard to urge an exception except on the ground specified in the court below: *People* v. *Nichols*, 62 Id. 518, 521. The proper time to make an objection to evidence is when it is offered. Moving to strike out evidence on grounds which might readily have been availed of to exclude it when offered ought not to be tolerated: *People* v. *Long*, 43 Id. 446.

Subd. 1. Allowance of challenge for implied bias not reviewable.—Only the disallowance of a challenge to a juror for implied bias is the subject of an exception. The action of the court in allowing such a challenge is not open to review: *People* v. *Murphy*, 45 Cal. 137; *People* v. *Colson*, 49 Id. 679; *People* v. *Atherton*, 51 Id. 495.

Subd. 2. Judgment of court on trial of challenge for actual bias final.—When a challenge to a juror for actual bias is tried by the court, its judgment upon that issue is final, and will not be reviewed on appeal. Exceptions taken to the admission or rejection of evidence on the trial of such challenge will be reviewed: *People* v. *Cotta*, 49 Cal. 166; *People* v. *Vasquez*, Id. 560; *People* v. *Taing*, 53 Id. 602.

Challenge, what constitutes: Sec. 1055, note.

Challenge for implied bias: Sec. 1074, note.

Challenge for actual bias: Sec. 1076.

Oral instructions: Sec. 1093, subd. 6, and note.

Instructions: Sec. 1127, note.

Subd. 3. Exceptions to evidence.—Where evidence has been allowed to go in without objection, the court will not entertain a motion to strike it out: *People* v. *Rolfe*, 61 Cal. 540. An objection to the admission of evidence cannot be made for the first time in the supreme court: *People* v. *Salorse*, 62 Id. 139, 145.

Evidence: Sec. 1102, in note.

Witnesses: Sec. 1102, in note.

1171. *Exceptions, when to be presented and signed.*

SEC. 1171. When a party desires to have the exceptions taken at the trial settled in a bill of exceptions, the draught of a bill must be prepared by him and presented, upon notice of at least two days to the district attorney, to the judge for settlement within ten days after judgment has been rendered against him, unless further time is granted by the judge, or by a justice of the supreme court, or within that period the draught must be delivered to the clerk of the court for the judge. When received by the clerk, he must deliver it to the judge, or transmit it to him at the earliest period practicable. When settled, the bill must be signed by the judge and filed with the clerk of the court. [*Amendment, approved February* 18, 1881; *Statutes and Amendments* 1881, 6.]

Bill of exceptions defined.—It is a statement in writing, settled and signed by the judge, of the ruling of the court upon a question of law, the facts in view of which it was made, and the protest of counsel: *People* v. *Torres*, 38 Cal. 141.

Contents of.—A bill of exceptions should contain only such evidence as is deemed necessary to illustrate the points of exceptions: Sec. 1175. The evidence should be set forth in a narrative form or by a statement of its substance, or what it tended to prove, and the questions should be stated only when it is necessary to present the point of an objection thereto: *People* v. *Trim*, 37 Cal. 274; *People* v. *Getty*, 49 Id. 584. When settled, it is presumed to contain all the evidence given upon the trial bearing on the objections presented: *People* v. *English*, 52 Id. 211. And it must show that evidence was introduced tending to prove every material issue; and if it fails to show this, it will be presumed that no evidence was introduced to prove such issue: *People* v. *Fisher*, 51 Id. 319. But if a bill recites that "each party introduced evidence to sustain the issue on their parts," it will be sufficient: *People* v. *Dye*, 7 Pac. C. L. J. 411. In criminal cases the particulars in which the evidence is sufficient to sustain the verdict need not be stated, but it is sufficient to state, generally, that the verdict is not sustained by the evidence: Id. All omissions or uncertainties in a bill are construed against the party presenting it: *People* v. *Williams*, 45 Cal. 25. It must affirmatively show error, every intendment being in favor of the judgment: Id.; *People* v. *Winters*, 29 Id. 658. Affidavits used to show the incompetency of a juror, and affidavits and other papers used upon a motion for a new trial, will not be considered on appeal unless incorporated in a bill properly authenticated: *People* v. *Stonecifer*, 3 Id. 405; *People* v. *Price*, 17 Id. 310; *People* v. *Padillia*, 42 Id. 535.

Settlement of.—The law requiring bills of exceptions in criminal cases to be settled within ten days after judgment is directory. They may be presented and settled after such time has expired if sufficient reason is shown for not

presenting them before: *People* v. *Martin*, 6 Cal. 477; *People* v. *Woppner*, 14 Id. 437; *People* v. *Lee*, Id. 510; *People* v. *White*, 34 Id. 183; *People* v. *Sprague*, 53 Id. 432. Two days' notice must be given to the district attorney of the time that a bill will be presented for settlement, and unless such notice is given the judge must refuse to settle it: *People* v. *Sprague*, Id. 422. The time to prepare a bill may be extended by the judge who tried the case or by a justice of the supreme court, and if presented within such time, and the judge should refuse to settle it, he may be compelled to do so by a writ of mandate: *People* v. *Keyser*, Id. 183. See *People* v. *Romero*, 18 Id. 89; *People* v. *Kahl*, Id. 432. After being settled it must be signed by the judge and filed. Signing by the district attorney, or by the attorneys who tried the case, or signing a stipulation annexed thereto that it is correct, is insufficient, and if not otherwise signed, it will be disregarded on appeal: *People* v. *Ferguson*, 34 Id. 309; *People* v. *Trim*, 37 Id. 274; *People* v. *Armstrong*, 44 Id. 326. In moving for new trials in criminal cases, it is not necessary that a bill of exceptions should be prepared before the motion is made, but it may be prepared after the motion has been determined at any time within ten days after the entry of the judgment: *People* v. *Fisher*, 51 Id. 319; *People* v. *Keyser*, 53 Id. 184; *People* v. *Hewell*, 6 Pac. C. L. J. 448. If settled before the motion is made it will be disregarded: *People* v. *Ah Fat*, 47 Cal. 631. Where a case was tried by one judge, and a motion for a new trial heard by his successor in office, a bill settled by the latter is properly authenticated: *People* v. *Hodgdon*, 55 Id. 72.

Reporters' notes.—As evidence, see sec. 1102 in note. The notes of the phonographic reporter form no part of a bill of exceptions, unless embodied therein or referred to in the bill so as to identify them: *People* v. *Taing*, 53 Cal. 602. Before incorporating such notes in a bill, all matters should be eliminated therefrom which are not necessary to illustrate the points to be presented on appeal. Unless such matters are eliminated, it is the duty of the court, not only to refuse to settle the bill, but to strike it from the files: *People* v. *Tetherow*, 40 Id. 286; *People* v. *Padillia*, 42 Id. 535; *People* v. *Getty*, 49 Id. 584; *People* v. *Sprague*, 53 Id. 423; *People* v. *Taing*, Id. 602.

1172. *Exceptions not taken on the trial, but which may be taken by both parties.*

SEC. 1172. Exceptions may be taken by either party to the decision of a court or judge upon a matter of law:

1. In granting or refusing a motion to set aside an indictment or information;

2. In allowing or disallowing a demurrer to an indictment or information;

3. In granting or refusing a motion in arrest of judgment;

4. In granting or refusing a motion for a new trial;

5. In making, or refusing to make, an order after judgment affecting any substantial right of the parties. [*Amendment, approved March* 10, 1885; *Statutes and Amendments* 1885, 58.]

Subd. 1.—Motion to set aside indictment, on the ground that the arresting officer was a witness before the grand jury, a witness in the case, and an interpreter for other witnesses, denied: *People* v. *Ramirez*, 56 Cal. 533.

Exceptions: Sec. 1170, note.

Bill of exceptions: Sec. 1171, and note.

Bill of exceptions, contents of: Sec. 1171, and note.

Bill of exceptions, settlement of: Sec. 1171, and note.

1173. *Exceptions not taken on the trial, but which may be taken by the defendant.*

SEC. 1173. Exceptions may be taken by the defendant to a decision of the court upon a matter of law:

1. In refusing to grant a motion for a change of the place of trial;

2. In refusing to postpone the trial on motion of the defendant.

Refusing to postpone trial.—An exception to an order of the court denying the defendant's motion for a continuance can only be presented on appeal by a bill of exceptions. If affidavits are used on the motion, they should be incorporated in the bill, or in some mode clearly identified as having been read on the hearing: *People* v. *Weaver*, 47 Cal. 106.

1174. *Proceedings on settlement of bill of exceptions.*

SEC. 1174. Where a party desires to have the exceptions mentioned in the last two sections settled in a bill of exceptions, the draught of a bill must be prepared by him and presented, upon notice of at least two days to the adverse party, to the judge, for settlement, within ten days after the order or ruling complained of is made, unless further time is granted by the judge, or by a justice of the supreme court, or within that period the draught must be delivered to the clerk of the court for the judge. When received by the clerk, he must

deliver it to the judge, or transmit it to him at the earliest period practicable. When settled, the bill must be signed by the judge and filed with the clerk of the court. If the judge in any case refuse to allow an exception in accordance with the facts, the party desiring the bill settled may apply by petition to the supreme court to prove the same, the application may be made in the mode and manner, and under such regulations as that court may prescribe; and the bill when proven must be certified by the chief justice as correct, and filed with the clerk of the court in which the action was tried, and when so filed, it has the same force and effect as if settled by the judge who tried the cause. If the judge who presided at the trial ceases to hold office before the bill is tendered or settled, he may nevertheless settle such bill, or the party may, as provided in this section, apply to the supreme court to prove the same. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 448; *took effect July* 1, 1874.]

Settlement of bill of exceptions: Sec. 1171, note.

1175. *What bill of exceptions is to contain.*

SEC. 1175. A bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken; and the judge must, upon the settlement of the bill, whether agreed to by the parties or not, strike out all other matters contained therein.

See *ante*, sec. 1171, in note.

1176. *Written charges not to be excepted to.*

SEC. 1176. When written charges have been presented, given, or refused, or when the charges have been taken down by the reporter, the questions presented in such charges need not be excepted to or embodied in a bill of exceptions, but the written charges or the report, with the indorsements showing the action of the court, form part of the record, and any error in the decision of the court thereon may be taken advantage of on appeal, in like manner as if presented in a bill of exceptions.

Action of court upon instructions, how shown.—The action of the court in giving or refusing instructions must be shown on appeal either by the indorsement of the judge thereon, or by incorporating them in a bill of exceptions, together with the ruling of the court made at the time they are given or refused: *People* v. *Thompson*, 28 Cal. 218; *People* v. *Martin*, 32 Id. 91; *People* v. *Tetherow*, 40 Id. 286; *People* v. *Hart*, 44 Id. 598. In the latter case, it was held, under section 438 of the criminal practice act, Hittell's Gen. Laws, par. 2025, of which section 1176 of this code is a re-enactment, that the written charges referred to therein meant only such as either party might present and ask to be given, and not to such charges as the court gave of its own motion, and that such charges were not a part of the judgment roll, and would not be considered upon an appeal from the judgment; but by section 1207, subdivision 3, *post*, all charges given or refused, and the indorsements thereon, constitute a part of the judgment roll or record of the action.

Reporters' notes, how embodied in bill of exceptions: Sec. 1171, note.

CHAPTER VI.

NEW TRIALS.

1179. *New trial defined.*

SEC. 1179. A new trial is a re-examination of the issue in the same court, before another jury, after a verdict has been given.

Motion, how made.—A motion for new trial must be made *viva voce*. If desired, the grounds of the motion and the rulings of the court thereon may be embodied in a bill of exceptions, and can be reviewed by the supreme court in no other way: *People* v. *Ah Sam*, 41 Cal. 645.

Motion, by whom heard.—It seems that the motion for new trial need not necessarily be heard by the judge who presided at the trial: *People* v. *Hobson*, 17 Cal. 424; *People* v. *Hodgdon*, 55 Id. 72.

Bill of exceptions.—In making a motion for new trial, it is not necessary to have a bill of exceptions or statement prepared beforehand, or for the hearing of the motion. The bill of exceptions may be settled after the motion is heard and settled: *People* v. *Fisher*, 51 Cal. 319; *People* v. *Keyser*, 53 Id. 183; *People* v. *Hewell*, 6 Pac. C. L. J. 448.

1180. *Effect of granting new trial.*

SEC. 1180. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to either in evidence or in argument, or be pleaded in bar of any conviction which might have been had under the indictment. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 449; *took effect July* 1, 1874.]

Jeopardy: Sec. 687, note; *People* v. *Apgar*, 35 Cal. 389; *People* v. *Gilmore*, 4 Id. 376; *People* v. *Barric*, 49 Id. 342; *People* v. *Olwell*, 28 Id. 456.

1181. *In what cases it may be granted.*

SEC. 1181. When a verdict has been rendered against the defendant, the court may, upon his application, grant a new trial in the following cases only:

1. When the trial has been had in his absence, if the indictment is for a felony;

2. When the jury has received any evidence out of court other than that resulting from a view of the premises;

3. When the jury has separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented;

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;

5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial;

6. When the verdict is contrary to law or evidence;

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable.

Subd. 1. Trial in absence of defendant.—Where the jury during the trial were permitted to view the scene of the alleged crime, in custody of the sheriff, without the presence of defendant, it was held not to be error; that this view is not a part of the trial within the meaning of the statute requiring the presence of defendant during the trial: *People* v. *Bonney*, 19 Cal. 426; but see, *contra*, *Benton* v. *State*, 30 Ark. 328, 348; *State* v. *Bertin*, 24 La. Ann. 46; *Eastwood* v. *People*, 3 Park. Cr. 25; see also note to sec. 1119, *ante*. On appeal, if the record does not affirmatively show that defendant was absent during a portion of the trial, it will be presumed that he was present: *People* v. *Stuart*, 4 Cal. 218; see *People* v. *Trim*, 37 Id. 274.

Subd. 3. Separation of jury.—Where the jury, after retiring to deliberate upon their verdict, separate without permission of the court, the irregularity is sufficient, ordinarily, to set aside the verdict of guilty rendered by them: *People* v. *Brannigan*, 21 Cal. 337; *People* v. *Backus*, 5 Id. 275. But the mere fact that the jury separate without permission of the court does not necessarily require that a new trial should be granted. A presumption is thereby afforded that the jury have been subjected to improper influences; but this presumption may be removed by an affirmative showing that no injury resulted to defendant from the separation: *People* v. *Symonds*, 22 Id. 348. The retirement of several jurors for a few moments, with permission of the sheriff, and for a necessary purpose, is not a sufficient ground for granting a new trial, no misconduct being shown: *People* v. *Moore*, 41 Id. 238; *People* v. *Bonneg*, 19 Id. 426.

Subds. 3, 4. Misconduct of jury.—"It is the settled rule that to warrant the setting aside of a verdict and granting a new trial upon the ground of irregularities and misconduct of jury, it must be either shown as a fact or presumed as a conclusion of law that injury resulted from such misconduct:" *People* v. *Lyle*, 4 West Coast Rep. 349, 351. Where a juror during the progress of the trial manifested a tendency to talk about the case, such action is not sufficient ground for granting a new trial, where it appears conclusively that defendant was not prejudiced thereby: *People* v. *Dennis*, 39 Cal. 625. But see *People* v. *Turner*, Id. 370. A new trial will not be granted because some of the jury may have conversed with third persons while deliberating on their verdict, if it be

shown that such conversations were innocent: *People* v. *Symonds*, 22 Id. 348; see also *People* v. *Boggs*, 20 Id. 432. The presumption is that jurors perform their duty in accordance with the oath they have taken: *People* v. *Williams*, 24 Id. 31; *People* v. *Lyle*, 4 West Coast Rep. 349. Affidavits on the question of misconduct of the jury being conflicting, the ruling of the court below will not be disturbed on appeal: *People* v. *Dye*, 62 Cal. 523. Insufficient evidence of misconduct of juror: See *People* v. *Anthony*, 56 Id. 397; that it is not misconduct warranting a new trial for one of the jurors to visit during the trial the scene of the alleged burglary: *People* v. *Hope*, 62 Id. 241. Entertaining of juror by counsel during progress of trial will not warrant a new trial unless the defendant was prejudiced: See *People* v. *Lyle*, 4 West Coast Rep. 349.

Intoxicating liquors given to jurors during trial: See *People* v. *Gray*, 61 Cal. 164.

Affidavit to impeach verdict.—Ordinarily the affidavits of jurors will not be received to impeach their verdict, but it seems the rule is otherwise when the verdict is arrived at by a resort to the determination of chance: *People* v. *Hughes*, 29 Cal. 257; *People* v. *Sprague*, 53 Id. 491; see also *People* v. *Wyman*, 15 Id. 70; *People* v. *Lee*, 17 Id. 76. In the note to *Crawford* v. *State*, 24 Am. Dec. 475, the question whether the verdict of a jury in a criminal case may be impeached by the affidavits of the jurors is considered at length. But that such affidavits are not admissible in this state, see *People* v. *Gray*, 61 Cal. 164, 183.

Affidavit in support of verdict.—That a juror's affidavit may be used in support of a verdict which has been assailed for misconduct, see *People* v. *Hunt*, 59 Cal. 430.

Subd. 5. Erroneous rulings: Sec. 1127, note. Any substantial error of the court on a question or matter arising during the course of the trial is a proper ground for granting motion for new trial: *People* v. *Turner*, 39 Cal. 370.

Subd. 6. Verdict contrary to evidence. If the judge before whom the case was tried is satisfied that the conviction was obtained on the testimony of witnesses unworthy of belief, it is his duty, on application of defendant, to grant a new trial: *People* v. *Baker*, 39 Cal. 686. If the verdict is clearly not sustained by the evidence, a new trial will be granted: *People* v. *Lewis*, 36 Id. 531. But the appellate court will not grant a new trial on the ground that the verdict is contrary to the evidence, if the testimony is conflicting, and there is any evidence to support the verdict: *People* v. *Brown*, 27 Id. 500; *People* v. *Strange*, 61 Id. 496; *People* v. *Darr*, Id. 554; nor will the supreme court assume that a witness was not worthy of belief in order to grant a new trial: *People* v. *Anthony*, 56 Id. 397. It is said that in order to authorize the appellate court to set aside a verdict on the ground that it is against the evidence, there must be such overwhelming evidence against the verdict as to justify the presumption that it was rendered under the influence of passion, or prejudice, or bias of some kind: *People* v. *Vince*, 21 Id. 400; see also *People* v. *Martin*, 2 Id. 484; *People* v. *Ah Loy*, 10 Id. 301.

Contrary to law.—A verdict is not contrary to law which finds the lowest offense within the charge in the indictment: *People* v. *Jamarillo*, 57 Cal. 111.

Subd. 7. Newly discovered evidence. A motion for a new trial on the ground of newly discovered evidence should not be granted without a satisfactory showing of diligence, nor unless sufficient reason is shown why the evidence was not produced at the trial: *People* v. *Ah Ton*, 53 Cal. 741. Where there is reason to doubt that defendant at the time of the trial was ignorant of the existence of the evidence, and no attempt is made to procure it until after the trial, and no good reason for the delay is shown, a new trial ought not to be granted on the ground of newly discovered evidence: *People* v. *Cummings*, 57 Id. 88. For a case where proper diligence was shown, the moving party having been prevented from getting the evidence earlier, see *People* v. *Stanford*, 64 Id. 27. The affidavit of the witness, showing what his testimony will be, should be procured, or it should be shown that it could not be had: *People* v. *Bealoba*, 17 Id. 389; *People* v. *Voll*, 43 Id. 166; see also *People* v. *Miller*, 33 Id. 99. Newly discovered evidence simply cumulative: *People* v. *Anthony*, 56 Id. 397; *People* v. *Chin Ah Hong*, 61 Id. 376; or designed to contradict witnesses, will not entitle to a new trial: *People* v. *Anthony*, *supra*. Applications for new trials on account of newly discovered evidence are not favored by the courts. In the well-considered case of *Berry* v. *State*, 10 Ga. 511, it was said that it is incumbent on the party who asks for a new trial on the ground of newly discovered evidence to satisfy the court: 1. That the evidence has come to his knowledge since the trial; 2. That it was not owing to the want of due diligence that it did not come sooner; 3. That it is so material that it would probably produce a different verdict if the new trial were granted; 4. That it is not cumulative only, viz., speaking to facts in relation to which there was evidence on the trial; 5. The affidavit of the witness himself should be produced, or its absence accounted for; 6. A new trial will not be granted, if the only object of the testimony is to impeach the character or credit of a witness.

New trial.—In a criminal case a new trial can only be granted on application of defendant: *People* v. *Bangeneaur*, 40 Cal. 613. The only grounds upon which a new trial will be granted are those specified in the section: *People* v. *Bernstein*, 18 Id. 699; *People* v. *Fair*, 43 Id. 137; see also *People* v. *Keyser*, 53 Id. 183; *People* v. *Shainwold*, 51 Id. 468; *People* v. *Jocelyn*, 29 Id. 562; *People* v. *Chung Lit*, 17 Id. 320; *People* v. *Woods*, 43 Id. 176; *People* v. *McAuslan*, Id. 55. An erroneous statement of the evidence by counsel during his argument to the jury is not ground for a new trial: *People* v. *Barnhart*, 59 Cal. 402.

1182. *Application for, when made.*

SEC. 1182. The application for a new trial must be made before judgment.

Motion for new trial.—In a criminal case when a motion for a new trial is made, it is heard as it would be were it brought on for hearing immediately after the rendition of the verdict, and neither a statement nor the reporter's notes need be filed in support of the motion:

People v. *Fisher*, 51 Cal. 319; *People* v. *Keyser*, 53 Id. 183; *People* v. *Hewell*, 6 Pac. C. L. J. 448. See *People* v. *Sing Lum*, 61 Cal. 538, where a motion for a new trial was made after *remittitur* issued from the supreme court dismissing an appeal, judgment not having been entered, and after a *nunc pro tunc* order directing the judgment to be entered as of the date of its rendition; the motion was denied.

CHAPTER VII.

ARREST OF JUDGMENT.

1185. *Motion in arrest of judgment defined.*

SEC. 1185. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant, on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment or information mentioned in section one thousand and four, unless the objection has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 25 (*Ban. ed.* 172); *took effect immediately.*]

Arrest of judgment on defendant's motion.—A motion in arrest of judgment may be made before or at the time the defendant is called for judgment. If a defendant has demurred and his demurrer has been overruled, he may move in arrest of judgment upon all the grounds of demurrer enumerated in section 1004, and upon those alone: *People* v. *Dick*, 37 Cal. 277; *People* v. *Turner*, 39 Id. 372; *People* v. *Fair*, 43 Id. 147; *People* v. *Indian Peter*, 48 Id. 250; *People* v. *McCarty*, Id. 557. See *People* v. *Feilen*, 58 Id. 218, when defects were not allowed to be used on this motion, they having been waived by a failure to demur. But if he has failed to demur, such motion can only be founded upon the grounds mentioned in section 1012: *People* v. *Shotwell*, 27 Id. 394; *People* v. *Swenson*, 49 Id. 388. The defects in the indictment authorizing this motion must be specifically stated and pointed out as the basis of such motion in the lower court to entitle the ruling thereon to be reviewed on appeal: *People* v. *Dick*, 37 Id. 277. Prior to the adoption of the codes, an order arresting a judgment was not appealable, and could only be reviewed upon an appeal from the final judgment: *People* v. *Turner*, 39 Id. 370; *People* v. *Ah Kim*, 44 Id. 384. But such an order may now be appealed from: Sec. 1238, subd. 3, *post*. A variance in the name of the insurance company given in an indictment for arson to defraud and that proved is no ground for arresting a judgment: *People* v. *Hughes*, 29 Cal. 257; *People* v. *Schwartz*, 32 Id. 165.

1186. *Court may arrest judgment without motion.*

SEC. 1186. The court may also, on its own view of any of these defects, arrest the judgment without motion.

Arrest of judgment by court.—If the evidence shows that the offense of a defendant indicted as an accessary was not committed in the county where the indictment was found, the court should arrest the judgment without the defendant making a motion to that effect: *People* v. *Hodges*, 27 Cal. 340; see *Ex parte Hartman*, 44 Id. 34.

1187. *Effect of arresting judgment.*

SEC. 1187. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found or information filed. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 25 (*Ban. ed.* 172); *took effect immediately.*]

Effect of arresting judgment.—The effect of an order arresting a judgment in a criminal case is to place the defendant, as nearly as other and controlling rules of law will permit, in the same situation in which he was before the indictment was found. Upon its entry he is entitled to his discharge, unless detained by virtue of some legal process or order: *Ex parte Hartman*, 44 Cal. 32.

1188. *Defendant, when to be held or discharged.*

SEC. 1188. If, from the evidence on the trial, there is reason to believe the defendant guilty, and a new indictment or information can be framed upon which he may be convicted, the court may order him to be recommitted to the officer of the proper county, or admitted to bail anew, to answer the new indictment or information. If the evidence shows him guilty of another offense,

he must be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution. But if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged; or if admitted to bail, his bail is exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant; and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment or information was founded. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 25 (*Ban. ed.* 172); *took effect immediately.*]

Jeopardy: Sec. 687, note.

Defendant, discharge of.—The cases enumerated in the statute are the only ones in which a defendant can be discharged from an indictment or information without an actual trial: *People* v. *Indian Peter*, 48 Cal. 253.

TITLE VIII.

OF JUDGMENT AND EXECUTION.

CHAPTER I. THE JUDGMENT 1191
II. THE EXECUTION 1213

CHAPTER I.

THE JUDGMENT.

1191. *Appointing time for judgment.*

SEC. 1191. After a plea or verdict of guilty, or after a verdict against the defendant on the plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted, the court must appoint a time for pronouncing judgment, which, in cases of felony, must be at least two days after the verdict, if the court intend to remain in session so long; but if not, then at as remote a time as can reasonably be allowed. [*Amendment, approved March* 30, 1874; *Amendments* 1873-4, 449; *took effect July* 1, 1874.]

Appointing time for judgment.—The court may, in the absence of the defendant, fix a day for pronouncing sentence: *People* v. *Galvin*, 9 Cal. 115. The time allowed after conviction before sentence is pronounced, may be waived by the defendant, and he may consent that judgment be pronounced immediately: *People* v. *Robinson*, 46 Id. 94. The judgment in a criminal case need not be pronounced at the same term at which the verdict is rendered: *People* v. *Felix*, 45 Id. 163. A writ of mandate will not be issued to compel a court to render a judgment of acquittal: *Ex parte Cage*, Id. 248.

1192. *Upon plea of guilty, court must determine degree.*

SEC. 1192. Upon a plea of guilty of a crime distinguished or divided into degrees, the court must, before passing sentence, determine the degree.

Court must determine degree of crime upon plea of guilty.—The proceeding under this section is not a trial, nor has the defendant any right to have the question involved determined by a jury. The examination of witnesses to ascertain the degree of the crime need not be had at the time of or immediately after the plea of guilty; nor need any time elapse between the determination and the judgment. Any judgment or decision which shows the conclusion of the court as to the degree, from the examination, is sufficient: *People* v. *Noll*, 20 Cal. 164. The court should determine the degree, however, before pronouncing judgment: *People* v. *Jefferson*, 52 Id. 453. In *In re Brown*, 32 Id. 48, the defendant had pleaded guilty to an indictment for murder, which did not specify the degree. The court imposed a sentence of confinement in the state prison: *Held*, that the judgment was not a nullity, for the presumption was that the court, by testimony, ascertained the degree. If the defendant refuses to plead after his demurrer has been overruled, the court may pronounce judgment as upon a plea of guilty: *People* v. *King*, 28 Id. 266. So the court may direct a plea of not guilty to be entered: *People* v. *Jocelyn*, 29 Id. 562.

Jury upon conviction must determine degree: Sec. 1157, note.

1193. *Presence of defendant.*

SEC. 1193. For the purpose of judgment, if the conviction is for felony, the defendant must be personally present; if for a misdemeanor, judgment may be pronounced in his absence.

Presence of defendant.—Upon a conviction for a felony the defendant must be present when the judgment is pronounced; but the day for pronouncing judgment may be fixed in his absence: *People* v. *Galvin*, 9 Cal. 115. A judge who did not try the case, if legally presiding, has jurisdiction to pronounce sentence: *People* v. *Henderson*, 28 Id. 606. Where there is a misdemeanor, or where the punishment is only a fine, the defendant need not be present either in person or by attorney, but judgment may be rendered in his absence: *People* v. *Ebner*, 23 Id. 159; *People* v. *Budd*, 7 Pac. C. L. J. 486; *Steele* v. *Commonwealth*, 3 Dana, 84.

Verdict in defendant's presence: Sec. 1148.

1194. *When defendant in custody, how brought before court for judgment.*

SEC. 1194. When the defendant is in custody, the court may direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so.

1195. *How brought before the court when on bail.*

SEC. 1195. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or of the money deposited, may direct the clerk to issue a bench-warrant for his arrest.

1196. *Bench-warrant to issue.*

SEC. 1196. The clerk, on the application of the district attorney, may, at any time after the order, whether the court be sitting or not, issue a bench-warrant into one or more counties.

1197. *Form of bench-warrant.*

SEC. 1197. The bench-warrant must be substantially in the following form: County of ——. The people of the state of California, to any sheriff, constable, marshal, or policeman in this state: A B, having been on the —— day of ——, A. D. eighteen hundred and ——, duly convicted in the superior court of the county of ——, of the crime of —— (designating it generally), you are therefore commanded forthwith to arrest the above-named A B, and bring him before that court for judgment. Given under my hand, with the seal of said court affixed, this —— day of ——, A. D. eighteen hundred and ——. By order of the court. [Seal.] E F, Clerk. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 34 (*Ban. ed.* 200); *took effect immediately.*]

1198. *Warrant, how served.*

SEC. 1198. The bench-warrant may be served in any county in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by a magistrate of that county.

1199. *Arrest of defendant.*

SEC. 1199. Whether the bench-warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court or commit him to the officer mentioned in the warrant, according to the command thereof.

1200. *Arraignment of defendant for judgment.*

SEC. 1200. When the defendant appears for judgment he must be informed by the court, or by the clerk, under it its direction, of the nature of the charge against him, and of his plea, and the verdict, if any thereon, and must be asked

whether he has any legal cause to show why judgment should not be pronounced against him. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 26 (*Ban. ed.* 172); *took effect immediately.*]

Pronouncing judgment—Erroneous entry of date of judgment made in the minutes by the clerk may be corrected by order of court, even after appeal, and cannot invalidate a judgment regularly pronounced: *People* v. *Murback*, 64 Cal. 369. The statement required by this section, while necessary to pronouncing judgment, is no part thereof: Id.

1201. *What cause may be shown against the judgment.*

SEC. 1201. He may show, for cause, against the judgment:

1. That he is insane; and if, in the opinion of the court, there is reasonable ground for believing him to be insane, the question of insanity must be tried as provided in Chapter VI., Title X., Part II., of this code. If, upon the trial of that question, the jury find that he is sane, judgment must be pronounced; but if they find him insane, he must be committed to the state lunatic asylum until he becomes sane; and when notice is given of that fact, as provided in section thirteen hundred and seventy-two, he must be brought before the court for judgment;

2. That he has good cause to offer, either in arrest of judgment or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment, or for a new trial.

Arrest of judgment on defendant's motion: Sec. 1185, note.

Arrest of judgment by court: Sec. 1186, note.

Motion for new trial: Sec. 1179, notes.

Punishment of person while insane: Sec. 1367.

Subd. 1. Insanity of defendant: See section illustrated in *People* v. *Pico*, 62 Cal. 50, 55.

1202. *If no cause shown, judgment to be pronounced.*

SEC. 1202. If no sufficient cause is alleged or appears to the court why judgment should not be pronounced, it must thereupon be rendered.

Judgment, rendition of.—After a plea or verdict of guilty, the court must appoint a time for pronouncing judgment, as provided in section 1191. It may be pronounced immediately after a verdict or plea of guilty, if the defendant consents thereto: *People* v. *Robinson*, 46 Cal. 94. But it need not be at the same time the verdict is rendered: *People* v. *Felix*, 45 Id. 163. It must be given in open court, not in the judge's chambers: *Anonymous*, T. Raym. 68. And should be on a judicial day, and not on Sunday: *Young* v. *State*, 39 Ala. 357. It is generally customary, before pronouncing judgment, to ask the defendant if he has any legal cause to show why judgment should not be pronounced against him. In some states this is unnecessary: *State* v. *Ball*, 27 Mo. 324; *Jeffries* v. *Commonwealth*, 12 Allen, 145, 153. But in this state it is required: Sec. 1200. Judgments of inferior criminal courts are not required to be different from those of like courts of general jurisdiction: *People* v. *Forbes*, 22 Cal. 135; *Ex parte Kearney*, 55 Id. 212, 228.

Judgment, form of.—The judgment entered in the minutes is sufficient, if it states of what offense the defendant was finally convicted and the penalty imposed. It need not recite the facts contained in the other papers constituting the record in the action: *Re Edward Ring*, 28 Cal. 247; *Ex parte Murray*, 43 Id. 455. Nor the time of the commencement of the imprisonment. It is sufficient if it states the duration of the imprisonment and the place of confinement: *State* v. *Smith*, 10 Nev. 107. Judgments of inferior criminal courts are not required to be in different form from those of like courts of general jurisdiction: *People* v. *Forbes*, 22 Cal. 135. But see *Ex parte Kearney*, 55 Id. 212, 228.

Judgment—Should be certain and definite.—As a general rule, in criminal cases a judgment should be certain and definite and complete in itself, so that what it requires to be done may be known without resort to anything outside of the record: *People* v. *Forbes*, 22 Cal. 135. This, however, is not universally so, and it is a common practice in criminal courts to enter judgments of imprisonment at the expiration of sentences in other cases: *Brown* v. *Commonwealth*, 4 Rawle, 259; *Russell* v. *Commonwealth*, 7 Serg. & R. 489; *State* v. *Smith*, 5 Day, 175; *King* v. *Wilkes*, 4 Burr. 2575. Thus a judgment that the defendant be imprisoned for a specified term, "to commence at the expiration of previous sentences," is valid: *People* v. *Forbes*, 22 Cal. 135. So, too, is a judgment "that the defendant be imprisoned in the state prison for the term of three years from the date of his incarceration:" *People* v. *King*, 28 Id. 265. Or that the defendant "be imprisoned four years from the time of his delivery to the warden," etc.: *People* v. *Hughes*, 29 Id. 257. A failure to specify any time for the imprisonment to commence does not invalidate the judgment: *State* v. *Smith*, 10 Nev. 107. But a judgment for a term longer than that provided by the statute will be reversed, and the lower court directed to proceed to judg-

ment upon the verdict: *People* v. *Riley*, 48 Cal. 549; see *Ex parte Ah Cha*, 40 Id. 426. So a judgment which attempts to punish a man for an act which is not a crime is absolutely void: *People* v. *Kearney*, 55 Id. 212; see *People* v. *Liscomb*, 60 N. Y. 569; *Ex parte Siebold*, 100 U. S. 371. After sentence, but before the judgment is signed, it may be amended by shortening the time: *People* v. *Thompson*, 4 Cal. 238. If the indictment charges more than one offense in separate counts, and the verdict is general, the presumption will be that the judge who tried the case pronounced judgment for the offense to which the evidence was directed: *People* v. *Shotwell*, 27 Id. 394.

Judgment—Void and voidable defined: See a very valuable article by S. D. Thompson on "Void Sentences" in 4 Crim. L. Mag. 797. An error which will render a judgment voidable only is the want of adherence to some prescribed mode of proceeding in conducting the action or defense. An error which renders a judgment void is such an illegality as is contrary to the principles of law as distinguished from rules of procedure: *Ex parte Gibson*, 31 Cal. 619. Thus a judgment sentencing a person to imprisonment in the state prison upon conviction for a misdemeanor is void: *Ex parte Ah Cha*, 40 Id. 426. But in *Ex parte Max*, 44 Id. 579, such a judgment was held simply erroneous, subject to be corrected on appeal. The judgment is not void because it does not state the offense of which the prisoner was convicted, if it shows that he was indicted for some offense, and tried and convicted, and that the sentence passed on him was one which the court had jurisdiction to pronounce for some offense of which he might have been convicted under the indictment: *Ex parte Gibson*, 31 Id. 619. But a judgment which punishes a man for an act which is not a crime is absolutely void: *Ex parte Kearney*, 55 Id. 212; *Matter of Corryell*, 22 Id. 178. So a sentence of a party convicted under an unconstitutional law is void: *Ex parte Siebold*, 100 U. S. 371.

Arrest of judgment on defendant's motion: Sec. 1185, note.

Arrest of judgment by court: Sec. 1186, note.

1203. *Court may summarily inquire into circumstances, in aggravation or mitigation of punishment.*

SEC. 1203. After a plea or verdict of guilty, where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the oral suggestion of either party that there are circumstances which may be properly taken into view either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily, at a specified time, and upon such notice to the adverse party as it may direct.

Reasons for section.—"The provisions of this and the succeeding section are intended to regulate the practice in relation to the subject embraced therein, and sufficiently explain themselves. They also perform another office. A violation of either section is punished as a misdemeanor (sec. 166, subd. 8, of this code), and thereby all extrajudicial influences prevented:" Commissioners' note.

Mitigation and aggravation of punishment.—Where, by law, upon a plea or verdict of guilty, a discretion is vested in the court to determine the extent of the punishment, it should, before passing sentence, look at any evidence proper to "influence a judicious magistrate to make the punishment heavier or lighter:" 1 Bish. Crim. L., sec. 948; *Regina* v. *Dignam*, 7 Ad. & El. 593; *Rex* v. *Cox*, 4 Car. & P. 538; *Rex* v. *Withers*, 3 T. R. 428; *Rex* v. *Gregory*, 1 Car. & Kir. 228; *People* v. *Cochran*, 2 Johns. Cas. 73. Only circumstances of aggravation on the one side, and of mitigation on the other, will be received. Evidence that no crime has been committed will not be received, the verdict being conclusive of that fact: *State* v. *Brinyea*, 5 Ala. 241. Under the English practice, it is customary for the crown to produce affidavits in aggravation, which are first read, then for the defendant to produce and read affidavits in mitigation, after which the counsel for the crown is heard, and then the counsel for the defendant: *Regina* v. *Dignam*, 7 Ad. & El. 593. This rule may vary, however, depending upon the circumstances of each particular case: *King* v. *Sutton*, Id. 594, note. In this country the proper practice seems to be for the prisoner to present any extenuating circumstances upon which he may rely to make his sentence light, by producing in open court any witnesses he may have at a reasonable time before sentence is pronounced: Sec. 1204. He is entitled, as a matter of right, to a subpœna to compel the attendance of such witnesses: *State* v. *Smith*, 2 Bay, 62. So where by law the fixing of the punishment is to be determined by the jury when they find the defendant guilty, evidence in mitigation of the punishment is admissible: *Robbins* v. *State*, 20 Ala. 36; *Morton* v. *Trustees etc.*, 18 Ill. 383; *Sarah* v. *State*, 18 Ark. 114; *Kistler* v. *State*, 54 Ind. 400; *Eastman* v. *State*, Id. 441. Evidence in such cases of what amounts to a crime separate from the one charged in the indictment is not admissible in aggravation of the offense. *Ingram* v. *State*, 39 Ala. 247; *Skains* v. *State*, 21 Id. 218, 222; *Baker* v. *State*, 4 Pike, 56, 61.

1204. *Proof of former conviction or of facts, etc., in mitigation, etc., how made.*

SEC. 1204. The circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a magistrate of the county, out of court, upon such notice to the adverse party as the court may

direct. No affidavit or testimony, or representation of any kind, verbal or written, can be offered to or received by the court, or a judge thereof, in aggravation or mitigation of the punishment, except as provided in this and the preceding section.

1205. *Fines, what judgment may direct.*

SEC. 1205. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, specifying the extent of imprisonment, which must not exceed one day for every dollar of the fine. [*Amendment, approved March* 7, 1874; *Amendments* 1873–4, 455; *took effect sixtieth day after passage.*]

Payment of fine.—A judgment which directs the defendant to pay a fine, or be imprisoned until it is paid, should specify the extent of imprisonment, but a failure to do so will not render it inoperative: *People* v. *Markham*, 7 Cal. 208. The prisoner is entitled to a credit of two dollars (one dollar under the present law) for each day he remains in prison, and may at any time pay the sum remaining due and claim his discharge: *Ex parte Kelly*, 28 Id. 414. A judgment of a justice of the peace, in a case of misdemeanor, that the defendant be fined three hundred dollars, and that in default of payment he be imprisoned in the county jail not exceeding three hundred days, is a substantial compliance with this section: *Ex parte Ellis*, 54 Id. 204. See this case followed in *Ex parte Chin Yan*, 60 Id. 78.

This section does not apply to section 330 in regard to the offense of gaming: See *Ex parte Harrison*, 63 Cal. 299.

1206. *Judgment to pay a fine constitutes a lien.*

SEC. 1206. A judgment that the defendant pay a fine constitutes a lien, in like manner as a judgment for money rendered in a civil action.

Compare with section 1214.

1207. *Entry of judgment and judgment roll.*

SEC. 1207. When judgment upon a conviction is rendered, the clerk must enter the same in the minutes, stating briefly the offense for which the conviction was had, and the fact of a prior conviction (if one), and must, within five days, annex together and file the following papers, which will constitute a record of the action:

1. The indictment or information, and a copy of the minutes of the plea or demurrer;

2. A copy of the minutes of the trial;

3. The charges given or refused, and the indorsements thereon; and,

4. A copy of the judgment. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 26 (*Ban. ed.* 172); *took effect immediately.*]

Record of the action.—A bill of exceptions which has been duly settled and signed by the judge and filed constitutes a portion of the record of the action: *People* v. *Trim*, 37 Cal. 274. The record should show that the defendant was arraigned and pleaded, and if it does not show these facts, it will be presumed that there was no arraignment or plea: *People* v. *Gaines*, 52 Id. 479. The proceedings before the committing magistrate do not form a portion of the judgment roll in criminal cases: *People* v. *Shubrick*, 57 Id. 565. The record need not show that accused was present at the trial: *People* v. *Sepulveda*, 59 Id. 342. A copy of the minutes of the trial constitutes a part of the judgment roll: *People* v. *Gaines*, 52 Id. 479.

Subd. 3. Charge as part of the record: See *People* v. *Flahave*, 58 Cal. 249, 252.

Action of court upon instructions, how shown: Sec. 1176, note.

Entry of judgment.—Where the judgment was immediately entered in the memorandum-book kept by the clerk, but was not entered on the docket until twenty days thereafter, it was held not to avoid the judgment: *Ex parte Raye*, 63 Cal. 491.

CHAPTER II.

THE EXECUTION

1213. *Authority for the execution of a judgment other than of death.*

SEC. 1213. When a judgment other than of death has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

1214. *If for fine alone, execution to issue as in civil cases.*

SEC. 1214. If the judgment is for a fine alone, execution may be issued thereon as on a judgment in a civil action.

Stats. 1851, 212. See also sec. 1209.

Commitment for contempt under this section: See *Grady* v. *Superior Court*, 64 Cal. 155; *Matter of Tyler*, Id. 434, 438.

1215. *Judgment of fine and imprisonment, by whom and how executed.*

SEC. 1215. If the judgment is for imprisonment, or a fine, and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with.

Payment of fine: Sec. 1205.

Section is cited in *Ex parte Harrison*, 63 Cal. 299, 300; *Matter of Tyler*, 64 Id. 438.

1216. *Duty of sheriff on receiving copy of judgment of imprisonment.*

SEC. 1216. If the judgment is for imprisonment in the state prison, the sheriff of the county must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden of the state prison. He must also deliver to the warden the certified copy of the judgment, and take from the warden a receipt for the defendant.

Execution: Sec. 1213.

1217. *Warrant of execution upon judgment of death.*

SEC. 1217. When judgment of death is rendered, a warrant, signed by the judge, and attested by the clerk under the seal of the court, must be drawn and delivered to the sheriff. It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which must not be less than thirty nor more than sixty days from the time of judgment.

Execution of death-sentence: See secs. 1228, 1229. The day for carrying into effect a sentence of death should not be designated in the judgment, but in the warrant for the execution: *People* v. *Bonilla*, 38 Cal. 699; *People* v. *Murphy*, 45 Id. 137. If the judgment of death is not executed on the day appointed, the court rendering it may appoint another day for carrying it into effect: *People* v. *Bonilla*, 38 Id. 701. Upon the affirmance of an order or judgment in a criminal case, no order of the appellate court directing the lower court to proceed to carry the judgment into effect is necessary: *People* v. *Dick*, 39 Id. 182. The defendant is entitled to be in court when an order for his execution is made: *People* v. *Sprague*, 54 Id. 92.

A statement in the judgment that defendant be taken to the "place of public execution" is surplusage. Section 190 prescribes that death shall be by hanging, and sections 1228 and 1229 direct how it shall be done: *People* v. *Brown*, 59 Cal. 345, 357.

1218. *Judge to transmit statement of conviction and testimony to governor.*

SEC. 1218. The judge of the court at which a conviction requiring judgment of death is had must, immediately after the conviction, transmit to the governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

Pardoning power: Sec. 1417, note.

1219. *Governor may require opinion of justices of supreme court, etc., thereon.*

SEC. 1219. The governor may thereupon require the opinion of the justices of the supreme court and of the attorney-general, or any of them, upon the statement so furnished.

1220. *Judgment of death, when suspended.*

SEC. 1220. No judge, court, or officer other than the governor can suspend the execution of a judgment of death, except the sheriff, as provided in the six succeeding sections, unless an appeal is taken.

1221. *If reason to suppose defendant insane, jury to inquire into it; how and by whom ordered.*

SEC. 1221. If, after judgment of death, there is good reason to suppose that the defendant has become insane, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon from the list of jurors selected by the supervisors for the year a jury of twelve persons to inquire into the supposed insanity, and must give immediate notice thereof to the district attorney of the county.

1222. *Duty of district attorney upon inquisition.*

SEC. 1222. The district attorney must attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court.

1223. *Inquisition, how certified and filed.*

SEC. 1223. A certificate of the inquisition must be signed by the jurors and the sheriff, and filed with the clerk of the court in which the conviction was had.

1224. *Proceedings upon finding of jury.*

SEC. 1224. If it is found by the inquisition that the defendant is sane, the sheriff must execute the judgment; but if it is found that he is insane, the sheriff must suspend the execution of the judgment until he receives a warrant from the governor, or from the judge of the court by which the judgment was rendered, directing the execution of the judgment. If the inquisition finds that the defendant is insane, the sheriff must immediately transmit it to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

1225. *Proceedings when female is supposed to be pregnant.*

SEC. 1225. If there is good reason to suppose that a female against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof must be given to the district attorney of the county, and the provisions of sections twelve hundred and twenty-two and twelve hundred and twenty-three apply to the proceedings upon the inquisition.

1226. *Proceedings upon the finding of the jury.*

SEC. 1226. If it is found by the inquisition that the female is not pregnant, the sheriff must execute the judgment; if it is found that she is pregnant, the sheriff must suspend the execution of the judgment, and transmit the inquisition to the governor. When the governor is satisfied that the female is no

longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

1227. *Proceedings when judgment of death remaining in force has not been executed.*

SEC. 1227. If for any reason a judgment of death has not been executed, and it remains in force, the court in which the conviction was had, on the application of the district attorney, must order the defendant to be brought before it, or if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reasons exist against the execution of the judgment, must make an order that the sheriff execute the judgment at a specified time. The sheriff must execute the judgment accordingly.

Judgment of death, in force and unexecuted.—If the judgment of death be not executed, from any cause, on the day appointed, it is competent for the court which rendered the judgment to appoint another day for carrying it into execution: *People* v. *Bonilla*, 38 Cal. 699; see also *People* v. *Dick*, 39 Id. 102. Defendant has the right to be present when such order fixing the time for his execution is made, and to make it in his absence is error: *People* v. *Sprague*, 54 Id. 92; *People* v. *Sing Lum*, 61 Id. 538. It will be presumed that the defendant was present unless the record discloses that he was not: *People* v. *Sing Lum*, *supra*.

The purpose of this section "is in the nature of an order to show cause, and when any reason exists why the judgment of the court should not be executed, it is the duty of the defendant when brought into court to present it:" *People* v. *Sing Lum*, 61 Cal. 538, 540.

1228. *Punishment of death, how inflicted.*

SEC. 1228. The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

Stats. 1851, 212; cited *People* v. *Brown*, 59 Cal. 345, 357.
Warrant of execution: Sec. 1217.

1229. *Execution, where to take place, and who to be present.*

SEC. 1229. A judgment of death must be executed within the walls or yard of a jail, or some convenient private place in the county. The sheriff of the county must be present at the execution, and must invite the presence of a physician, the district attorney of the county, and at least twelve reputable citizens, to be selected by him; and he shall, at the request of the defendant, permit such ministers of the gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace-officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same.

Founded upon the act to abolish public executions: Stats. 1858, 192, sec. 1.
Cited in *People* v. *Brown*, 59 Cal. 345, 357.

1230. *Return upon death-warrant.*

SEC. 1230. After the execution, the sheriff must make a return upon the death-warrant, showing the time, mode, and manner in which it was executed.

Stats. 1858, 192, sec. 3.

TITLE IX.

OF APPEALS TO THE SUPREME COURT.

CHAPTER I. APPEALS, WHEN ALLOWED AND HOW TAKEN, AND THE EFFECT THEREOF 1235
II. DISMISSING AN APPEAL FOR IRREGULARITY 1248
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CHAPTER I.

APPEALS, WHEN ALLOWED AND HOW TAKEN, AND THE EFFECT THEREOF.

1235. *Who may appeal—Appeal on questions of law alone.*

SEC. 1235. Either party in a criminal action amounting to a felony may appeal to the supreme court, on questions of law alone, as prescribed in this chapter.

Appeal, right to.—Prior to the adoption of the present constitution, the right to appeal in criminal actions was limited to actions amounting to a felony upon questions of law alone: Cal. Const., 1863, art. 6, sec. 4; *People* v. *Smallman*, 55 Cal. 185; *People* v. *Aubrey*, 53 Id. 427. Under the present constitution the appellate jurisdiction of the supreme court in criminal cases extends to "all criminal cases prosecuted by indictment or information in a court of record:" Const. Cal., 1879, art. 6, sec. 4.

In does not confine the supreme court's appellate jurisdiction to cases of which a court of record has jurisdiction; therefore, an appeal may lie to the supreme court, although the superior court has no jurisdiction of the offense charged in the information: *People* v. *Pingree*, 61 Cal. 141. There a motion to dismiss an appeal, on the ground of want of jurisdiction, was denied, and the judgment reversed, with directions to the court below to dismiss the action. Where there is no evidence to sustain the charge set forth in the indictment or information, a question of law is presented, on which the supreme court, in the exercise of its appellate criminal jurisdiction, is competent to act: *People* v. *Smallman*, 55 Cal. 191; *People* v. *Jones*, 31 Id. 565.

Appellate jurisdiction, how exercised.—If no means are provided by statute for taking an appeal in those cases in which the right of appeal is given by the constitution, a case may be removed to the supreme court by writ of error: *People* v. *Thistleton*, 52 Cal. 220; *Adams* v. *Town*, 3 Id. 247; *Middleton* v. *Gould*, 5 Id. 190. But where an appeal is given, a writ of error does not lie: *S. P. R. R. Co.* v. *Harlan*, 24 Id. 334.

Misdemeanors, appeals in cases amounting to.—Compare this section with article 6, section 4, of the constitution above quoted, and see the construction adopted in *People* v. *Jordan*, 4 West Coast Rep. 85, where appeals in misdemeanor cases, prosecuted by indictment or information, it is determined will be entertained. See that case for the procedure decided upon.

1236. *Parties, how designated on appeal.*

SEC. 1236. The party appealing is known as the appellant, and the adverse party as the respondent, but the title of the action is not changed in consequence of the appeal.

1237. *In what cases appeal may be taken by defendant.*

SEC. 1237. An appeal may be taken by the defendant:

1. From a final judgment of conviction;
2. From an order denying a motion for a new trial;
3. From any order made after judgment, affecting the substantial rights of the party.

Appeal by defendant.—The cases in which an appeal may be taken by defendant are only those specified in the foregoing section. Such orders and rulings made prior to the judgment, and involving the merits, or which may have affected the judgment from which an appeal is not in terms given, can only be reviewed on appeal from the final judgment of conviction: *People* v. *Majors*, 1 West Coast Rep. 859; *People* v. *Clarke*, 42 Cal. 622. A preliminary order made in the action is not appealable. Thus no appeal lies from an order directing a charge, once ignored, to be resubmitted to another grand jury: *People* v. *Clarke*, *supra*. Neither does an appeal lie by the people from a verdict of acquittal: *People* v. *Webb*, 38 Id.

467. Under the provisions of the criminal practice act, an order setting aside an indictment was held appealable: *People* v. *Jones*, 31 Id. 565. But an appeal does not lie from an order admitting a party to bail: *People* v. *Schuster*, 40 Id. 627. An appeal by defendant from an order made subsequent to the sustaining of a demurrer to an indictment, that the district attorney file an information against the defendant, is not appealable: *People* v. *Specht*, 62 Id. 537. Neither does an appeal lie by the defendant from an order granting him a new trial: *People* v. *Ah Choy*, 6 Pac. C. L. J. 1013. Nor from an order denying defendant's motion in arrest of judgment: *People* v. *Markham*, 64 Cal. 157, 163; *People* v. *Majors*, 1 West Coast Rep. 859. Nor from a judgment against defendant on his plea of former conviction: *People* v. *Majors*, *supra*.

Appeal from final judgment.—Upon an appeal from the judgment, without having made a motion for new trial, defendant may rely upon any of the grounds of exception mentioned in section 1170, but in such case he must have had a bill of exceptions settled, as provided in section 1171: *People* v. *Keyser*, 53 Id. 183.

Appeal from order denying new trial.—An appeal from an order denying a new trial will be dismissed if taken more than sixty days after the order is made: *People* v. *Varnum*, 53 Cal. 630. If the appeal is from an order denying a new trial, and the transcript contains no bill of exceptions, statement, or affidavits, the order denying a new trial will be affirmed: *People* v. *Welch*, 57 Cal. 138. Defendant can not appeal from an order granting him a new trial: *People* v. *Ah Choy*, 6 Pac. C. L. J. 1013. See also *People* v. *Keyser*, 53 Cal. 183.

Appeal from order made after judgment.—When defendant is convicted of murder, and sentenced to be hanged, an order made by the court appointing a day for execution is an order from which an appeal may be taken: *People* v. *Sprague*, 54 Cal. 92.

Motion in arrest of judgment is not appealable: *People* v. *Markham*, 64 Cal. 157; *People* v. *Majors*, 1 West Coast Rep. 859.

Intermediate orders not appealable: See *People* v. *Clarke*, 42 Cal. 622; *People* v. *Ah Kim*, 44 Id. 384; *People* v. *Majors*, 1 West Coast Rep. 859.

1238. *In what cases an appeal may be taken by the people.*

SEC. 1238. An appeal may be taken by the people:

1. From a judgment for the defendant on a demurrer to the indictment or information;

2. From an order granting a new trial;

3. From an order arresting judgment;

4. From an order made after judgment, affecting the substantial rights of the people;

5. From an order of the court directing the jury to find for the defendant. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 26 (*Ban. ed.* 173); *took effect immediately.*]

Appeal by the people: An order sustaining a demurrer is a final judgment, from which an appeal will lie: *People* v. *Ah Ow*, 39 Cal. 604; *People* v. *Jordan*, 4 West Coast. Rep. 84; but see *People* v. *Martin*, 47 Cal. 112. In *People* v. *Young*, 31 Id. 563, an order setting aside an indictment on defendant's motion, on the ground that it was found on illegal testimony, was held appealable. In *People* v. *Schuster*, 40 Id. 627, it was held that no appeal could be taken from an order of a judge admitting the defendant to bail under the provisions of the title relating to *habeas corpus:* Sec. 1490 et seq. An appeal does not lie by the state from a verdict of acquittal: *People* v. *Webb*, 38 Id. 467; see also *People* v. *Ah Kim*, 44 Id. 384. No appeal lies from an order admitting a party to bail: *People* v. *Schuster*, 40 Id. 627. Nor from an order dismissing the action for want of prosecution: *People* v. *Hollis*, 2 West Coast Rep. 71. An appeal by the people from an order sustaining a demurrer to an indictment will be dismissed, there being perfected an appeal by the defendant from the same order: *People* v. *Jordan*, Id. 133. Where an attempt is made to appeal from a non-appealable order, the court will either dismiss the appeal or strike the cause from the calendar: *People* v. *Hollis*, *supra*.

1239. *Appeal, within what time to be taken.*

SEC. 1239. An appeal from a judgment must be taken within one year after its rendition, and from an order within sixty days after it is made.

Appeal from order.—If taken more than sixty days after the order is made, it will be dismissed: *People* v. *Varnum*, 53 Cal. 630.

Appeals in misdemeanor cases.—"We will adopt the practice pursued in taking the present appeal, and will hereafter entertain appeals in criminal actions prosecuted by indictment or information amounting to misdemeanors only from the judgments and orders mentioned in chapter 1 of title 9 of part 2 of the Penal Code, where the appeal is taken in the manner therein prescribed:" *People* v. *Jordan*, 4 West Coast Rep. 84, 90.

1240. *Appeal, how taken.*

SEC. 1240. An appeal is taken by filing with the clerk of the court in which the judgment or order appealed from is entered or filed a notice stating the

appeal from the same, and serving a copy thereof upon the attorney of the adverse party.

"**This section is such a departure** from section 488 of the criminal practice act as will avoid the rule laid down in *People* v. *Wallace*, 23 Cal. 93:" Commissioners' note.

Appeal, how taken.—It is not necessary that the notice of appeal should be signed by the attorney who tried the action. Any attorney authorized by defendant may sign the notice of appeal, and that, too, without a formal substitution of attorneys: *Ex parte Clarke*, 62 Cal. 490. The transcript on appeal should show that the notice of appeal has been both served and filed: *People* v. *Phillips*, 45 Id. 44; *People* v. *Clark*, 49 Id. 455. A recital in a bill of exceptions that a notice of appeal has been served and filed is no evidence that an appeal has been taken: *People* v. *Phillips*, 45 Id. 44. The notice of appeal must be served and filed on the same day: *People* v. *Ah Yute*, 56 Id. 119. When no notice of appeal is given, or no record that any was given appears to the supreme court, the case will be stricken from the calendar, there being no appeal taken: *People* v. *Pico*, January term, 1872 (No. 3017).

Appellate jurisdiction, how exercised: See. 1235, note.

Appeal bond.—Where in a criminal case a justice of the peace exacts, and the defendants give, a security in the form of a bond on appeal which the statute does not require, no liability results from its execution: *People* v. *Cabannes*, 20 Cal. 525.

Notice, filing and serving.—Whether this section requires filing to precede service of notice not decided: *People* v. *Grigsby*, 62 Cal. 482; or *People* v. *Jordan*, 4 West Coast Rep. 138. But an admission of "due service" will be construed of service after filing: *People* v. *Grisby*, *supra*. And the service and filing on the same day is a compliance with the statute: *People* v. *Jordan*, *supra*.

Sufficiency of notice: See *People* v. *Jordan*, 4 West Coast Rep. 85, where a notice was held sufficient, as plainly indicating the purpose of appeal. Calling a judgment an "order" does not render the notice ineffectual: Id.

1241. *When notice may be served by publication.*

SEC. 1241. If personal service of the notice cannot be made, the judge of the court in which the action was tried, upon proof thereof, may make an order for the publication of the notice in some newspaper for a period not exceeding thirty days; such publication is equivalent to personal service.

1242. *Effect of an appeal by the people.*

SEC. 1242. An appeal taken by the people in no case stays or affects the operation of a judgment in favor of the defendant, until judgment is reversed.

1243. *Effect of appeal by defendant.*

SEC. 1243. An appeal to the supreme court from a judgment of conviction stays the execution of the judgment in all capital cases, and in all other cases, upon filing with the clerk of the court in which the conviction was had, a certificate of the judge of such court, or of a justice of the supreme court, that in his opinion there is probable cause for the appeal, but not otherwise. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 450; *took effect July* 1, 1874.]

Stay of execution.—Prior to the adoption of the code, the only method by which a stay of execution could be effected was by admitting the prisoner to bail pending appeal: *Ex parte Marks*, 49 Cal. 680; *Ex parte Hoge*, 48 Id. 3.

Bail after conviction of felony: Sec. 1272, note.

The amendment added the words after judgment "in all capital cases and in all other cases."

The following is the note of the commissioners: "Sections 1243, 1244, and 1245 were by the commissioners incorporated in the code, at the suggestion of Justice Wallace. Prior to the adoption of the code, the judgment, unless it imposed a fine only, might be executed pending an appeal; and perhaps, save in the case mentioned, and upon a judgment in a capital case, there was no power in the court to stay the execution of a judgment pending the appeal, unless in the cases in which bail might be taken and the defendant had the ability to give it. Said Justice Wallace, in *Ex parte Hoge*, on *habeas corpus*, 48 Cal. 3: 'The right to appeal to the supreme court is guaranteed by the constitution, and is as sacred as the right of trial by jury. It is one of the means the law has provided to determine the question of his guilt or innocence. Upon such an appeal, the ultimate question is nearly always as to the validity of the judgment under which the prisoner is to suffer; and it is certainly not consonant to our ideas of justice, if it can be prevented by legal means, that even while the question of guilt or innocence is yet being agitated in the form of an appeal, the prisoner should be undergoing the very punishment and suffering the very infamy which it was the lawful purpose of the appeal to avert. It would be somewhat akin to a practice of punishing the accused for his alleged offense while the jury was deliberating upon the verdict.' Hoge's case illustrates the evil of the rule existing prior to the code. No court could have stayed the execution of the sentence. Yet upon the appeal the judgment was reversed from the bench. The defendant

was admitted to bail pending the appeal, and thus the punishment was averted; but whether it could be averted or not depended solely upon his ability or non-ability to give bail. The law discriminated in favor of the rich and influential, and against the poor and friendless. Under the provisions of sections 1243, 1244, and 1245, every appeal taken in good faith will have the effect of suspending the judgment pending the appeal, the prisoner remaining in the custody of the sheriff in cases in which the offense is bailable, or in which, if bailable, the prisoner is unable to give bail."

1244. *When defendant in custody.*

SEC. 1244. If the certificate provided for in the preceding section is filed, the sheriff must, if the defendant be in his custody, upon being served with a copy thereof, keep the defendant in his custody without executing the judgment, and detain him to abide the judgment on appeal.

1245. *When execution of judgment commenced.*

SEC. 1245. If, before the granting of the certificate, the judgment has commenced, the further execution thereof is suspended, and upon service of a copy of such certificate, the defendant must be restored, by the officer in whose custody he is, to his original custody.

1246. *Duty of clerks upon appeal.*

SEC. 1246. Upon the appeal being taken, the clerk with whom the notice of appeal is filed must, within ten days thereafter, in case the bill of exceptions has been settled by the judge before the giving of said notice, but if not, then within ten days from the settlement of the bill of exceptions, without charge, transmit to the clerk of the appellate court a copy of the notice of appeal, and of the record, and of all bills of exceptions, instructions, and indorsements thereon; and, upon the receipt thereof, the clerk of the appellate court must file the same and perform the same services as in civil cases, without charge. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 9 (*Ban. ed.* 153); *took effect from passage.*]

Duty of clerk.—It is the duty of the clerk to certify to the correctness of the documents in a transcript, if they are correct copies of the originals in his custody, and transmit the same to the supreme court. For all the purposes connected with its appellate jurisdiction, the supreme court has the same power over the clerk of the court below that it has over its own clerk. After an appeal is perfected, the court below has no longer any jurisdiction of the action, and an order of such court forbidding its clerk to certify to the correctness of a transcript on appeal is void: *People* v. *Center*, 54 Cal. 236; see also *People* v. *Geiger*, 49 Id. 643; *People* v. *Myers*, 20 Id. 76.

Transcript on appeal.—In a criminal case, a copy of the notice of appeal and of the record, and of all bills of exceptions, instructions, and indorsements thereon, constitutes the only evidence in the supreme court of the proceedings of the court from which the appeal is taken. The "record of the action" consists of: 1. The indictment and a copy of the minutes of the plea or demurrer; 2. A copy of the minutes of the trial; 3. The charges given or refused, and the indorsements thereon; 4. A copy of the judgment: *People* v. *Colby*, 4 Pac. C. L. J. 333; see also *People* v. *Martin*, 32 Cal. 91; *People* v. *Romero*, 18 Id. 89. The clerk of the supreme court must file the transcript in criminal actions without his fees in advance: *People* v. *Myers*, 20 Id. 76. Appeal was dismissed, the transcript not containing the judgment from which the appeal was taken: *People* v. *Sing Lum*, 60 Id. 6. To enable the appellate court to review the instructions, the evidence must be embodied in the record: Id.; *People* v. *Herbert*, 61 Id. 545.

CHAPTER II.

DISMISSING AN APPEAL FOR IRREGULARITY.

1248. *For what irregularity and how dismissed.*

SEC. 1248. If the appeal is irregular in any substantial particular, but not otherwise, the appellate court may, on any day, on motion of the respondent, upon five days' notice, accompanied with copies of the papers upon which the motion is founded, order it to be dismissed. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 10 (*Ban. ed.* 154); *took effect from passage.*]

Escape of defendant pending appeal.—A defendant who escapes during the pendency of his appeal will not be heard in the appellate court unless he returns to custody, but his appeal will be dismissed: *People* v. *Redinger*, 55 Cal. 290.

1249. *Dismissal for want of a return.*

SEC. 1249. The court may also, upon like motion, dismiss the appeal, if the return is not made as provided in section twelve hundred and forty-six, unless for good cause they enlarge the time for that purpose.

CHAPTER III.

ARGUMENT OF THE APPEAL.

1252. *Appeals, when to be heard and determined.*

SEC. 1252. All appeals in criminal cases must be heard and determined by the appellate court within sixty days after the record is filed in said appellate court, unless continued on motion or with the consent of the defendant. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 10 (*Ban. ed.* 154); *took effect from passage.*]

1253. *Judgment may be affirmed, but cannot be reversed without argument.*

SEC. 1253. The judgment may be affirmed if the appellant fail to appear, but can be reversed only after argument, though the respondent fail to appear.

Right to appear by counsel: *People* v. *Redinger*, 55 Cal. 298.

1254. *Number of counsel to be heard.*

SEC. 1254. Upon the argument of the appeal, if the offense is punishable with death, two counsel must be heard on each side, if they require it. In any other case the court may, in its discretion, restrict the argument to one counsel on each side.

Stats. 1854, 81, sec. 5.

1255. *Defendant need not be present.*

SEC. 1255. The defendant need not personally appear in the appellate court.

Right to appear by counsel.—A defendant who has escaped from custody has no right to appear in the appellate court by counsel until he has returned into custody. By breaking jail and escaping, he waives his right to have counsel appear for him: *People* v. *Redinger*, 55 Cal. 298; *Commonwealth* v. *Andrews*, 97 Mass. 544; *Sherman* v. *Commonwealth*, 14 Gratt. 677; *Leftwich's Case*, 20 Id. 716; *People* v. *Genet*, 59 N. Y. 80; *Smith* v. *United States*, 94 U. S. 97. It is generally the practice, on motions to dismiss an appeal because the defendant refuses to submit to the jurisdiction of the court, to enter an order directing the appeal to be dismissed unless the defendant returns into custody by a fixed date: Id.; *People* v. *Redinger*, 55 Cal. 299.

CHAPTER IV.

JUDGMENT UPON APPEAL.

1258. *Court to give judgment without regard to technical errors.*

SEC. 1258. After hearing the appeal, the court must give judgment without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties.

Judgment on appeal.—On hearing on appeal the supreme court will give judgment without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the defendant: *People* v. *Sprague*, 53 Cal. 491; *People* v. *Turley*, 50 Id. 469; *People* v. *Nelson*, 56 Id. 77; *People* v. *St. Clair*, Id. 406, S. C., 55 Id. 524; *People* v. *Cronin*, 34 Id. 191; *People* v. *Dick*, 32 Id. 213. Errors which do not prejudice will not warrant a reversal: Id.; sec. 1404; *People* v. *Rolfe*, 61 Cal. 540, 544; *People* v. *Morine*, Id. 367, 373; *People* v. *Smith*, 59 Id. 601; *People* v. *Williams*, Id. 674, 677, where the court went outside the evidence in charging the jury, but simply by way of illustration. A technical error is not sufficient of itself to reverse a judgment, but it must appear that by such error a substantial right of

the defendant has been thereby affected, and the defendant must affirmatively prove that fact: *People* v. *Brotherton*, 47 Id. 404. Thus a failure to record the written verdict before the jury is discharged, though an irregularity, is not fatal to the judgment unless it appears that the defendant may have been prejudiced thereby in some substantial right: *People* v. *Gilbert*, 57 Id. 96. So the recording a verdict before it is read to the jury is an irregularity, but the defendant cannot complain, because he is not affected in a substantial right: *People* v. *Nichols*, 7 Pac. C. L. J. 436; neither can the defendant complain because an order denying his motion for a change of venue was entered in vacation instead of term time: *People* v. *Congleton*, 44 Cal. 93. A judgment will not be reversed by the appellate court by reason of alleged error in a proceeding had in the course of the trial by express agreement of the defendant and his counsel, unless bound to do so by some controlling rule of law: *People* v. *Henderson*, 28 Id. 466. So a party cannot complain of an instruction given at his own request: *People* v. *Lopez*, 59 Id. 362. The appellant must affirmatively show error; the appellate court will not presume it: *People* v. *Ferris*, 56 Id. 442; *People* v. *Gilbert*, 60 Id. 108, 112; *People* v. *Johnson*, 47 Id. 122; *People* v. *Brotherton*, Id. 388; *People* v. *Best*, 39 Id. 690; *People* v. *Jocelyn*, 29 Id. 562; *People* v. *King*, 27 Id. 507; *People* v. *Levison*, 16 Id. 98; *People* v. *Bonney*, 19 Id. 426; *People* v. *Connor*, 17 Id. 354; *People* v. *Robinson*, 17 Id. 363; *People* v. *Bealoba*, Id. 389; *People* v. *Lafuente*, 6 Id. 202; but where error has been committed in a criminal trial, it will be presumed to have injured the defendant unless the contrary clearly appears: *People* v. *Murphy*, 47 Id. 103; *People* v. *Furtado*, 57 Id. 345, 347; but see *People* v. *Gray*, 61 Id. 182, and the cases there cited. If there is a substantial conflict in the evidence the verdict will not be disturbed on appeal, on the ground that it was not justified by the evidence: *People* v. *Montgomery*, 53 Id. 576; *People* v. *Smallman*, 55 Id. 185. Although some of the instructions given may not state the law applicable to the case with precise accuracy, yet if taken as a whole they are substantially correct, and could not have misled the jury, the judgment will not be disturbed: *People* v. *Cleveland*, 49 Id. 577; *People* v. *Clementshaw*, Id. 385; *People* v. *Salorse*, 62 Id. 139, 144; *People* v. *Ye Park*, Id. 204; *People* v. *Tamkin*, Id. 468; *People* v. *Gray*, 61 Id. 164, 182; see in note to sec. 1127.

Immaterial errors: Sec. 1404, note.

1259. *What may be reviewed on appeal by defendant from judgment.*

SEC. 1259. Upon an appeal taken by the defendant from a judgment, the court may review any intermediate order or ruling involving the merits, or which may have affected the judgment.

Review on appeal.—An order denying a motion for a continuance may be reviewed on appeal: *People* v. *Diaz*, 6 Cal. 248; see secs. 1052, note, 1173, note. Any intermediate order of the court, and any action of the court during the progress of the trial, by which defendant is deprived of a substantial legal right, or by which to any extent a substantial legal or constitutional privilege claimed by him is withheld, is a proper subject-matter of review on appeal: *People* v. *Harrington*, 42 Cal. 165. An order directing that a criminal charge ignored by a grand jury be submitted to another is not appealable: *People* v. *Clarke*, Id. 622; nor an order arresting a judgment: *People* v. *Ah Kim*, 44 Id. 384; see sec. 1238, note.

Intermediate orders not appealable: Sec. 1237, note.

1260. *May reverse, affirm, or modify the judgment, and order new trial.*

SEC. 1260. The court may reverse, affirm, or modify the judgment or order appealed from, and may set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon such judgment or order, and may, if proper, order a new trial.

Judgment on appeal: Sec. 1258, note.

Error in instructions: Sec. 1127, note.

Error in admission or rejection of evidence: Sec. 1102, note.

New trial: Sec. 1181, and notes. The question whether a defendant in a criminal case is entitled to a new trial, on the ground that the verdict is contrary to evidence, is one of law, and not of fact, within the meaning of the constitution, and the supreme court on appeal has therefore jurisdiction of the question: *People* v. *Jones*, 31 Cal. 565; *People* v. *Smallman*, 55 Id. 191. "Unless the evidence is so slight as that the court below would be justified in directing a verdict for defendant, we are not authorized to reverse a judgment upon the ground that the evidence does not sustain a verdict of guilty:" *People* v. *Bird*, 60 Id. 7, 8. If the verdict finding the accused guilty is clearly not sustained by the evidence the judgment will be reversed: *People* v. *Turner*, 39 Id. 370. But if there is a substantial conflict in the evidence, the verdict will not be disturbed: *People* v. *Montgomery*, 53 Id. 576. If a motion for new trial is made and denied, and a bill of exceptions is prepared, settled, and signed, the bill should show that evidence was introduced tending to prove every material issue, and if it fails to show this, it will be presumed that as to such issue the verdict is contrary to the evidence: *People* v. *Fisher*, 51 Id. 319.

1261. *New trial, where to be had.*

SEC. 1261. When a new trial is ordered, it must be directed to be had in the court of the county from which the appeal was taken.

1262. *Defendant, when to be discharged on reversal of judgment.*

SEC. 1262. If a judgment against the defendant is reversed without ordering a new trial, the appellate court must, if he is in custody, direct him to be discharged therefrom; or if on bail, that his bail be exonerated; or if money was deposited instead of bail, that it be refunded to the defendant.

People v. *Hardisson*, 61 Cal. 378, is not within this section.

1263. *Judgment to be executed on affirmance.*

SEC. 1263. If a judgment against the defendant is affirmed, the original judgment must be enforced.

Enforcement of judgment.—Where the judgment is affirmed and *remittitur* sent to the court below, no order of the appellate court is necessary, directing the court below to enforce the judgment: *People* v. *Dick*, 39 Cal. 102.

1264. *Judgment of appellate court, how entered and remitted.*

SEC. 1264. When the judgment of the appellate court is given, it must be entered in the minutes, and a certified copy of the entry forthwith remitted to the clerk of the court from which the appeal was taken.

Remittitur.—When a certified copy of the judgment of the supreme court is remitted to the court from which the appeal was taken, the supreme court loses all jurisdiction of the case; and all orders necessary to carry the judgment into effect must be made by the lower court: *Ex parte Jones*, 41 Cal. 209. Where a *remittitur* is regularly issued, without inadvertence, the supreme court has no power to recall it: *People* v. *Sprague*, 5 Pac. C. L. J. 739. And no order of the appellate court is necessary directing the trial court to enforce the judgment: *People* v. *Dick*, 39 Cal 102.

1265. *Jurisdiction of appellate court ceases after judgment remittea.*

SEC. 1265. After the certificate of the judgment has been remitted to the court below, the appellate court has no further jurisdiction of the appeal or of the proceedings thereon, and all orders necessary to carry the judgment into effect must be made by the court to which the certificate is remitted.

Jurisdiction, when ceases: Sec. 1264, note; *People* v. *Bonilla*, 38 Cal. 699; *People* v. *Dick*, 39 Id. 102; *Ex parte Jones*, 41 Id. 210.

Power of appellate court after remittitur: See also Code Civ. Proc., sec. 958. The jurisdiction of the appellate court is divested when the *remittitur* or mandate is sent to and filed in the court below, and such appellate court has no further control over its judgment, unless there has been fraud, mistake, or inadvertence in the proceedings. "The supreme court has no appellate jurisdiction over its own judgments; it cannot review or modify them after the case has once passed, by the issuance of a *remittitur*, from its control. . . . . The court cannot recall the case and reverse its decision after the *remittitur* is issued. It has determined the principles of law which shall govern, and having thus determined, its jurisdiction in that respect is gone. And if the new trial is had in accordance with its decision, no error can be alleged in the action of the court below:" *Leese* v. *Clark*, 20 Cal. 417, *per* Field, J. Such is the well-established rule: *Phelan* v. *San Francisco*, 20 Id. 39; *Blanc* v. *Bowman*, 22 Id. 23; *People* v. *Sprague*, 5 Pac. C. L. J. 739; *Noman* v. *Bradley*, 12 Wall. 129; *Legg* v. *Overtagh*, 4 Wend. 188; S. C., 21 Am. Dec. 115, 118, and the note thereto. The jurisdiction of the appellate court does not cease, however, until the *remittitur* or mandate is filed in the court below: *Judson* v. *Gray*, 17 How. Pr. 289; *Crogan* v. *Ruckle*, 1 Cal. 193; *Mateer* v. *Brown*, Id. 231. Thus where the *remittitur* was filed in the lower court after an order had been made granting a rehearing, the jurisdiction to reconsider the cause was held not to be taken away: *Grogan* v. *Ruckle*, Id. 193. So where any irregularity, error, or inadvertence in granting the order upon which the *remittitur* is founded intervenes, the appellate court does not lose jurisdiction, and may recall the *remittitur* after it has been sent down and filed: *Vance* v. *Peña*, 36 Id. 328; *Hanson* v. *McCue*, 43 Id. 178; *Bernal* v. *Wade*, 46 Id. 640.

TITLE X.

MISCELLANEOUS PROCEEDINGS.

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CHAPTER I.

BAIL.

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ARTICLE I.

IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

1268. *Admission to bail defined.*

SEC. 1268. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail.

Bail—The giving of bail is the procuring by defendant under arrest of sureties who undertake that he will appear when called. On the sureties executing a formal engagement to this effect the defendant is, in theory of law, delivered to the custody of the sureties, but practically is allowed to go at large. Should the sureties, however, become distrustful that he will keep his engagement, they may surrender him to judicial custody. They have the authority of jailers to take their principal into their actual custody, and to surrender him to prison: See Abbott's Law Dict., tit. Bail, secs. 1278, note, 1300, note, 1301, note.

"Bail in Criminal Cases" is the title of a valuable article by S. D. Thompson in 6 Crim. Law Mag. 1.

Bail, where taken: See sec. 1284. A prisoner arrested for felony must, in order to procure bail, be taken before the magistrate who issued the warrant, or before some other magistrate in the same county: *Ex parte Hung Sin*, 54 Cal. 102.

Duty of court as to bail—The nature of proceedings in bail, and the purpose at which they aim, require that the authority and discretion of the court having jurisdiction of the offense, to admit to bail, to increase or reduce the amount of bail, etc., should be exercised whenever substantial justice would thereby be promoted: *Ex parte Ryan*, 44 Cal. 555. In fixing the amount of bail, the sole purpose which should guide the court or judge should be to cause the appearance of the accused to answer the charge against him: *Ex parte Duncan*, 54 Id. 75.

1269. *Taking of bail defined.*

SEC. 1269. The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant according to the terms of the undertaking, or that the bail will pay to the people of this state a specified sum.

Amount of bail.—In fixing the amount of bail, the sole purpose which should guide the court should be to cause the appearance of the accused to answer the charge against him: *Ex parte Duncan*, 54 Cal. 75.

Excessive bail.—Excessive bail shall not be required: Cal. Const., art. 1, sec. 6; U. S. Const., Amendment 8. In order to constitute it "excessive," it must be *per se* unreasonably great and clearly disproportionate to the offense involved, or the peculiar circumstances appearing must show it to be so in the particular case: *Ex parte Ryan*, 44 Cal. 558. The sum of one hundred and twelve thousand dollars is not excessive bail for ten distinct felonies, such being the sum alleged to have been received by the defendant by reason of the felonies: *Ex parte Duncan*, 53 Id. 410. Where defendant is held to answer a charge of assault with intent to commit murder, the sum of fifteen thousand dollars is not excessive bail: *Ex parte Ryan*, 44 Id. 555. See *Ex parte McLaughlin*, 41 Id. 212, 220, where the defendant in a capital case was admitted to bail by the supreme court in the sum of ten thousand dollars.

1270. *Offense not bailable.*

SEC. 1270. A defendant charged with an offense punishable with death cannot be admitted to bail, when the proof of his guilt is evident or the presumption thereof great. The finding of an indictment does not add to the strength of the proof or the presumptions to be drawn therefrom.

Constitutional provision.—All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great: Art. 1, sec. 6.

Offenses not bailable.—Admission to bail in capital cases when the proof is evident or the presumption great may be made a matter of discretion, or may be forbidden by legislation: *People* v. *Tinder*, 19 Cal. 539. In all other cases admission to bail is a right of the accused, which no court can properly refuse: Id. A person charged with murder, committed by the administration of drugs and mechanical means with intent to produce an abortion, from the effects of which death resulted, is entitled to be admitted to bail: *Ex parte Wolff*, 57 Id. 94; see also *People* v. *McLaughlin*, 41 Id. 212, for a capital case, where defendant was held entitled to be admitted to bail, it appearing that on the first trial the jury were unable to agree, and had been discharged without the defendant's consent. And *Ex parte Troia*, 64 Id. 152, where the court refused to discharge on *habeas corpus* with bail.

1271. *In what cases defendant may be admitted to bail before conviction.*

SEC. 1271. If the charge is for any other offense, he may be admitted to bail before conviction, as a matter of right.

Bail as matter of right.—In all other than capital cases, and in all capital cases where the guilt is not evident or the presumption great, defendant is entitled to bail as a matter of right, which no court can properly refuse: *People* v. *Tinder*, 19 Cal. 539. The constitution, in declaring bail to be a matter of right, contemplates only those cases where the party has not been already convicted: *Ex parte Voll*, 41 Id. 29; sec. 1270, notes. Bail should be accepted in all cases if it will secure the presence of the defendant at the trial and sentence. The danger of escape increases in proportion to the severity of the impending punishment, and the danger of conviction, and in determining the question of accepting bail, and the amount thereof, these two elements should be taken into consideration: 1 Bish. Crim. Proc., sec. 255; *People* v. *Cunningham*, 3 Park. Cr. 520; *People* v. *Van Horne*, 8 Barb. 158.

Bail, application for, what look into.—On applications for admission to bail, the law presumes the defendant guilty: *Ex parte Ryan*, 44 Cal. 555; *Ex parte Duncan*, 54 Id. 75. In the determination, however, of this question, the principal consideration being the question of probable guilt, the court or judge will look into the depositions taken before the coroner and also those taken before the committing magistrate: 1 Bish. Crim. Proc., sec. 257; *Rex* v. *Pepper*, Comb. 298; *Rex* v. *Horner*, 1 Leach, 4th ed., 270; *State* v. *Dew*, Tayl. 142. But see *People* v. *Dixon*, 4 Park. Cr. 651. So the testimony of the witnesses before the grand jury may be considered on an application for bail: *Ex parte Bramer*, 37 Tex. 1; *Street* v. *State*, 43 Miss. 1. The mere fact that a grand jury has found an indictment for murder does not preclude the court or judge from an inquiry into the facts of the case to ascertain whether the offense may not be of such grade as to entitle the prisoner to bail: *Lynch* v. *People*, 38 Ill. 494; *People* v. *Beigler*, 3 Park. Cr. 316.

1272. *In what cases he may be admitted to bail after conviction and upon appeal.*

SEC. 1272. After conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail:

1. As a matter of right when the appeal is from a judgment imposing a fine only;

2. As a matter of discretion in all other cases.

Bail after conviction of felony.—Upon defendant's conviction of a felony not punishable capitally, his admission to bail is no longer a matter of right, but rests in the discretion of the court: *Ex parte Voll*, 41 Cal. 29; *Ex parte Hoge*, 48 Id. 3; *People* v. *Perdue*, Id. 552. In general, bail should not be allowed pending appeal except where circumstances of an extraordinary character have intervened: *Ex parte Marks*, 49 Id. 680; *Ex parte Smallman*, 54 Id. 35; *Ex parte Marshall*, 7 Pac. C. L. J. 724.

Bail, where judgment imposes fine.—Where the judgment in the case imposes a fine only, the defendant who has taken an appeal is entitled to be admitted to bail as a matter of right: *Ex parte Clarke*, 62 Cal. 490.

1273. *Nature of bail.*

SEC. 1273. If the offense is bailable, the defendant may be admitted to bail before conviction:

1. For his appearance before the magistrate on the examination of the charge, before being held to answer;

2. To appear at the court to which the magistrate is required to return the depositions and statements, upon the defendant being held to answer after examination;

3. After indictment, either before the bench-warrant is issued for his arrest, or upon any order of the court committing him, or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be transferred for trial.

And after conviction, and upon an appeal:

1. If the appeal is from a judgment imposing a fine only, on the undertaking of bail that he will pay the same, or such part of it as the appellate court may direct, if the judgment is affirmed or modified, or the appeal is dismissed;

2. If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment upon its being affirmed or modified, or upon the appeal being dismissed, or that in case the judgment be reversed, and that the cause be remanded for a new trial, that he will appear in the court to which said cause may be remanded, and submit himself to the orders and process thereof. [*Amendment, approved February* 15, 1876; *Amendments* 1875–6, 116; *took effect sixtieth day after passage.*]

Bail before conviction: Sec. 1271, note.

Bail after conviction of felony: Sec. 1272, note.

Bail where judgment imposes fine only: Sec. 1272, note.

Presumption of guilt.—Upon an application to reduce the bail of defendant after indictment, guilt will be presumed: *Ex parte Ryan*, 44 Cal. 555; *Ex parte Duncan*, 54 Id. 75.

1274. *When bail matter of discretion, notice of application to be given district attorney.*

SEC. 1274. When the admission to bail is a matter of discretion, the court or officer to whom the application is made must require reasonable notice thereof to be given to the district attorney of the county.

ARTICLE II.

BAIL UPON BEING HELD TO ANSWER BEFORE INDICTMENT.

1277. *What magistrates may admit to bail.*

SEC. 1277. When the defendant has been held to answer upon an examination for a public offense, the admission to bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of habeas corpus.

Bail on habeas corpus: See sec. 1286. After commitment, and where the bail of defendant has been fixed by the committing magistrate upon *habeas corpus*, the court or judge will not interfere to reduce the bail, unless the bail demanded is *per se* unreasonably great, and clearly disproportionate to the offense charged: *Ex parte Duncan*, 54 Cal. 75; *Ex parte Ryan*, 44 Id. 555.

1278. *Bail, how put in, and form of the undertaking.*

SEC. 1278. Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An order having been made on the —— day of ——, A. D. eighteen ——, by A B, a justice of the peace of —— county (or as the case may be), that C D be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been admitted to bail in the sum of —— dollars; we, E F and G H (stating their place of residence and occupation), hereby undertake that the above-named C D will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for judgment and render himself in execution thereof, or if he fails to perform either of these conditions, that we will pay to the people of the state of California the sum of —— dollars (inserting the sum in which the defendant is admitted to bail).

Undertaking.—An undertaking for the appearance of defendant in the form prescribed by the above section, conditioned that defendant will appear and answer the charge in whatever court it may be prosecuted, applies to the bond to be given for appearance before a magistrate for examination: *San Francisco* v. *Randall*, 54 Cal. 408. The undertaking need not state in what court the defendant shall appear, as the law provides in what court he shall be tried: *People* v. *Carpenter*, 7 Id. 402. Bail is a recognizance executed by the sureties; the accused need not sign it: *People* v. *Love*, 19 Id. 676; see also *People* v. *Smith*, 18 Id. 498.

Sureties, liability of.—The responsibility of the sureties attaches the moment defendant is released, and their liability is fixed by a breach of the conditions of the undertaking, and when a forfeiture is declared and entered by the proper court. The justification forms no part of the contract of the sureties, and in no manner affects their liability: *People* v. *Penniman*, 37 Cal. 271. The recital in the undertaking of the order admitting defendant to bail, and of the amount of bail, is conclusive upon the sureties: *San Francisco* v. *Randall*, 54 Id. 408.

1279. *Qualifications of bail.*

SEC. 1279. The qualifications of bail are as follows:

1. Each of them must be a resident householder or freeholder within the state; but the court or magistrate may refuse to accept any person as bail who is not a resident of the county where bail is offered;

2. They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

Stats. 1855, 269, sec. 1.

1280. *Bail, how to justify.*

SEC. 1280. The bail must in all cases justify by affidavit taken before the magistrate that they each possess the qualifications provided in the preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency, in such manner as he may deem proper.

Justification forms no part of the contract of the sureties, and in no manner affects their liability: *People* v. *Penniman*, 37 Cal. 271.

1281. *On allowance of bail, defendant to be discharged.*

SEC. 1281. Upon the allowance of bail and the execution of the undertaking, the magistrate must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer the defendant must be discharged.

Surrender of defendant by sureties: Secs. 1268, note, 1300, note.

Arrest of defendant by sureties: Sec. 1301, note.

Release of defendant.—An oral order of the judge from the bench that the defendant be released, certified by the clerk to the prison-keeper, and followed by defendant's release, is a sufficient compliance with the section, and renders the undertaking obligatory: *San Francisco* v. *Randall*, 54 Cal. 408.

ARTICLE III.

BAIL UPON AN INDICTMENT BEFORE CONVICTION.

1284. *When offense is not capital.*

SEC. 1284. When the offense charged is not punishable with death, the officer serving the bench-warrant must, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 26 (*Ban. ed.* 172); *took effect immediately.*]

Bail, where taken: See sec. 1268, note.

1285. *When offense is capital.*

SEC. 1285. If the offense charged is punishable with death, the officer arresting the defendant must deliver him into custody, according to the command of the bench-warrant. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 26 (*Ban. ed.* 173); *took effect immediately.*]

1286. *Bail on habeas corpus.*

SEC. 1286. When the defendant is so delivered into custody, he must be held by the sheriff, unless admitted to bail on examination upon a writ of habeas corpus.

Offense not bailable: See sec. 1270.

Bail on habeas corpus: Sec. 1277, and note. See *Ex parte Strange*, 59 Cal. 416, where a man charged with murder was admitted to bail on *habeas corpus.*

1287. *Form of undertaking.*

SEC. 1287. The bail must be put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An indictment having been found on the —— day of ——, A. D. eighteen ——, in the county court of the county of ——, charging A B with the crime of —— (designating it generally), and he having been admitted to bail in the sum of —— dollars, we, C D and E F, of —— (stating their place of residence and occupation), hereby undertake that the above-named A B will appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and will at all times render himself amenable to the orders and process of the court, and if convicted, will appear for judgment and render himself in execution thereof; or, if he fails to perform either of these conditions, that we will pay to the people of the state of California the sum of —— dollars (inserting the sum in which the defendant is admitted to bail).

Undertaking: Sec. 1278, note.

Sureties: Sec. 1278, note.

Justification: Sec. 1280, note.

Approval.—No indorsement of approval of the undertaking is necessary: *People* v. *Penniman*, 37 Cal. 271.

Action on forfeiture: Sec. 1306.

1288. *Provisions applicable to bail after indictment.*

SEC. 1288. The provisions contained in sections twelve hundred and seventy-nine, twelve hundred and eighty, and twelve hundred and eighty-one, in relation to bail before indictment, apply to bail after indictment. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 450; *took effect July* 1, 1874.]

1289. *Increase or reduction of bail.*

SEC. 1289. After a defendant has been admitted to bail upon an indictment or information, the court in which the charge is pending may, upon good cause shown, either increase or reduce the amount of bail. If the amount be increased, the court may order the defendant to be committed to actual custody, unless he give bail in such increased amount. If application be made by the defendant for a reduction of the amount, notice of the application must be served upon the district attorney. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 26 (*Ban. ed.* 173); *took effect immediately.*]

ARTICLE IV.

BAIL ON APPEAL.

1291. *Who may admit to bail.*

SEC. 1291. In the cases in which defendant may be admitted to bail upon an appeal, the order admitting him to bail may be made by any magistrate having the power to issue a writ of habeas corpus, or by the magistrate before whom the trial was had. [*Amendment, approved February* 25, 1878; *Amendments* 1877–8, 122; *took effect from passage.*]

Stats. 1851, 212.

Bail on appeal: Sec. 1272, notes; *Ex parte Voll*, 41 Cal. 29; *Ex parte Hoge*, 48 Id. 3; *People v. Perdue*, Id. 552; *Ex parte Marks*, 49 Id. 680; *Ex parte Smallman*, 54 Id. 35; *Ex parte Clarke*, 6 Pac. C. L. J. 1014.

1292. *Qualifications of bail and how put in, and condition of undertaking.*

SEC. 1292. The bail must possess the qualifications, and must be put in, in all respects, as provided in Article II. of this chapter, except that the undertaking must be conditioned as prescribed in section twelve hundred and seventy-three, for undertakings of bail on appeal.

ARTICLE V.

DEPOSIT INSTEAD OF BAIL.

1295. *Deposit, when and how made.*

SEC. 1295. The defendant, at any time after an order admitting him to bail, instead of giving bail may deposit with the clerk of the court in which he is held to answer the sum mentioned in the order, and upon delivering to the officer in whose custody he is a certificate of the deposit, he must be discharged from custody.

Return of deposit before forfeiture: Sec. 1302, *post.*

1296. *Deposit after bail is given and before forfeiture.*

SEC. 1296. If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made, the bail is exonerated.

1297. *Deposit to be applied to payment of judgment and fine.*

SEC. 1297. When money has been deposited, if it remains on deposit at the time of a judgment for the payment of a fine, the county clerk must, under the direction of the court, apply the money in satisfaction thereof, and after satisfying the fine and costs, must refund the surplus, if any, to the defendant.

ARTICLE VI.

SURRENDER OF THE DEFENDANT.

1300. *Surrender, by whom, when, and how made.*

SEC. 1300. At any time before the forfeiture of their undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1. A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon as upon a commitment, and by a certificate in writing acknowledge the surrender;

2. Upon the undertaking and the certificate of the officer, the court in which the action or appeal is pending may, upon notice of five days to the district attorney of the county, with a copy of the undertaking and certificate, order that the bail be exonerated, and on filing the order and the papers used on the application, they are exonerated accordingly.

Surrender of defendant by bail: Sec. 1268, note.

1301. *By whom defendant may be arrested for purpose of surrender.*

SEC. 1301. For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the state, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

Bail may arrest defendant: Sec. 1268, note.

1302. *On surrender, before forfeiture, money deposited to be refunded.*

SEC. 1302. If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate.

Deposit instead of bail: Sec. 1295, *ante.*

ARTICLE VII.

FORFEITURE OF THE UNDERTAKING OF BAIL, OR OF THE DEPOSIT OF MONEY.

1305. *Forfeiture, in what cases, and how ordered.*

SEC. 1305. If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon declared forfeited. But if at any time before the final adjournment of the court the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just.

1306. *Forfeiture enforced by action.*

SEC. 1306. If the forfeiture is not discharged, as provided in the last section, the district attorney may at any time after the adjournment of the court proceed by action only against the bail upon their undertaking.

Breach of bail bond.—The defendant, in a charge of misdemeanor, is not required to be personally present at the trial, and therefore a failure to be personally present when his case is called is not a breach of the undertaking of his bail: *Ex parte Budd*, 57 Cal. 349.

Action, in whose name brought.—In several cases in this state the action has been sustained when brought in the name of the people: *People* v. *Smith*, 18 Cal. 498; *People* v. *Love*, 19 Id. 677; *People* v. *Penniman*, 37 Id. 271. It has been sustained also when brought in the name of the county: *Mendocino Co.* v. *Lamar*, 30 Id. 628; *San Francisco* v. *Randall*, 54 Id. 408. "We see no objection to sustaining the action when brought either in the name of the county or of the people. The section above referred to [1287] requires that the amount named shall be payable to the people of the state of California; when recovered, it is to take certain named directions:" *People* v. *De Pelanconi*, 63 Id. 409, 410.

District attorney authorized to bring action: Pol. Code, sec. 4256, subd. 3.

1307. *Deposit, when forfeited, how disposed of.*

SEC. 1307. If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted, the clerk with whom it is deposited must, immediately after the final adjournment of the court, pay over the money deposited to the county treasurer.

ARTICLE VIII.

RECOMMITMENT OF THE DEFENDANT, AFTER HAVING GIVEN BAIL OR DEPOSITED MONEY INSTEAD OF BAIL.

1310. *Recommitment of defendant, in what cases.*

SEC. 1310. The court to which the committing magistrate returns the depositions, or in which an indictment, information, or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases:

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof;

2. When it satisfactorily appears to the court that his bail, or either of them, are dead or insufficient, or have removed from the state;

3. Upon an indictment being found or information filed in the cases provided in section nine hundred and eighty-five. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 27 (*Ban. ed.* 173); *took effect immediately.*]

1311. *Contents of order.*

SEC. 1311. The order for the recommitment of the defendant must recite generally the facts upon which it is founded, and direct that the defendant be arrested by any sheriff, constable, marshal, or policeman in this state, and committed to the officer in whose custody he was at the time he was admitted to bail, to be detained until legally discharged.

1312. *Defendant may be arrested in any county.*

SEC. 1312. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest, except that when arrested in another county the order need not be indorsed by a magistrate of that county.

1313. *If for failure to appear for judgment, defendant to be committed.*

SEC. 1313. If the order recites, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

1314. *If for other cause, he may be admitted to bail.*

SEC. 1314. If the order be made for any other cause, and the offense is bailable, the court may fix the amount of bail, and may cause a direction to be

inserted in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

1315. *Bail in such case, by whom taken.*

SEC. 1315. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county, having authority in a similar case to admit to bail, upon the holding of the defendant to answer before an indictment, or by any other magistrate designated by the court.

1316. *Form of the undertaking.*

SEC. 1316. When bail is taken upon the recommitment of the defendant, the undertaking must be in substantially the following form:

An order having been made on the —— day of ——, A. D. eighteen ——, by the court (naming it), that A B be admitted to bail in the sum of —— dollars, in an action pending in that court against him in behalf of the people of the state of California, upon an (information, presentment, indictment, or appeal, as the case may be), we, C D and E F, of (stating their places of residence and occupation), hereby undertake that the above-named A B will appear in that or any other court in which his appearance may be lawfully required upon that (information, presentment, indictment, or appeal, as the case may be), and will at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof; or if he fails to perform either of these conditions, that we will pay to the people of the state of California the sum of —— dollars (insert the sum in which the defendant is admitted to bail).

Undertaking: Sec. 1278, note.

1317. *Bail must possess what qualifications, and how put in.*

SEC. 1317. The bail must possess the qualifications, and must be put in, in all respects, in the manner prescribed in Article II. of this chapter.

Sureties: Sec. 1278, note.
Qualifications of bail: Sec. 1279.

CHAPTER II.

WHO MAY BE WITNESSES IN CRIMINAL ACTIONS.

1321. *Who competent witnesses.*

SEC. 1321. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this code.

Competency of witnesses.—The chapter relative to witnesses in the Code of Civil Procedure, secs. 1878 to 1884, is as follows:

1878. *Witnesses defined.*

SEC. 1878. A witness is a person whose declaration under oath is received as evidence for any purpose, whether such declaration be made on oral examination, or by deposition or affidavit.

1879. *All persons capable of perception and communication may be witnesses.*

SEC. 1879. All persons, without exception, otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and, perceiving, can make known their preceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case the credibility of the witness may be drawn in question, as provided in section eighteen hundred and forty-seven.

Competency.—It was held that a foreigner was not disqualified by the mere fact that he did not, when first produced, understand the meaning of the word "obligation," as applied to an oath. The section follows the fourth section of the first article of the constitution, as to matters of religious belief: *Fuller* v. *Fuller*, 17 Cal. 612. No witness can be excluded in any case on account of nationality or color: *People* v. *Maguire*, 45 Id. 57. An attorney of

record who is a witness in a cause may sum it up before the court or jury: *Branson* v. *Caruthers*, 49 Id. 382. But see the rules of the courts as to asking leave to do this. One who has been convicted of felony may testify: *People* v. *McLane*, 60 Id. 412.

1880. *Persons who cannot testify.*

SEC. 1880. The following persons cannot be witnesses:

1. Those who are of unsound mind at the time of their production for examination;

2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly;

2. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted, against an executor or administrator upon a claim, or demand against the estate of a deceased person, as to any matter of fact occurring before the death of such deceased person. [*Amendment, approved April* 16, 1880; *Amendments* 1880, 112 (*Ban. ed.* 347); *took effect immediately.*]

Subd. 2. Children.—There is no precise age within which children are excluded. It is essential that they should possess sufficient intelligence to receive just impressions of the facts respecting which they are examined, sufficient capacity to relate them correctly, and sufficient instruction to appreciate the nature and obligation of an oath. It is for the court to decide the question of their competency, when they are offered as witnesses: Sec. 2102. If over fourteen years of age, the presumption is that they possess the requisite knowledge and understanding; but if under that age the presumption is otherwise, and it must be removed upon their examination by the court, or under its direction, in its presence and in the presence of the parties, before they can be sworn: *People* v. *Bernal*, 10 Cal. 67; *Commonwealth* v. *Hutchinson*, 10 Mass. 225; *Jackson* v. *Gridley*, 18 Johns. 104; *Den* v. *Van Cleve*, 5 N. J. L. 589; *Rex* v. *Williams*, 7 Car. & P. 320; 1 East P. C. 442.

See *People* v. *Welsh*, 63 Cal. 167, where a child nine years of age testified on behalf of the prosecution. A deaf and dumb child nine years of age, who has no idea of the sanctity of an oath, and who cannot be made to understand questions asked, cannot be a witness: *Terry* v. *Duran*, 2 West Coast Rep. 274 (N. M.).

Subd 3. Parties to an action against executor.—This applies not only to parties who have an interest adverse to the estate, but to all nominal parties to the action: *Blood* v. *Fairbanks*, 50 Cal. 420. But not to a party claiming a family allowance: *Estate of McCausland*, 52 Id. 568.

This subdivision does not prohibit a person against whom an action is prosecuted by an executor, on a claim in favor of an estate, from being a witness in his own behalf: *Sedgwick* v. *Sedgwick*, 52 Cal. 336. Nor is it to be construed to prevent an executor or administrator from calling a party to the action to testify on behalf of the estate: *Chase* v. *Evoy*, 51 Id. 618. One seeking to charge the deceased as a trustee may testify: See *Meyers* v. *Reinstein*, 6 West Coast Rep. 635, where this section is considered.

1881. *Persons in certain relations to parties prohibited.*

SEC. 1881. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; and therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other;

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment;

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs;

4. A licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient;

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

Subd. 1. Husband and wife: See sec. 1322 of the Penal Code; and *People* v. *Langtree*, 64 Cal. 256, construing the same in regard to wife's testifying against her husband in a criminal action.

Subd. 2. Attorney.—The above doctrine was affirmed in *Landsberger* v. *Gorham*, 5 Cal. 450. But statements made by the client to other persons, or by other persons to him, in the attorney's presence, are not privileged, and the attorney is bound to disclose them: *Gallagher* v. *Williamson*, 23 Id. 331. If it appears by extraneous evidence, or from the very nature of the transaction, that confidence was not and (on the maxims by which human nature is ordinarily governed) could not have been contemplated, then the fact may be proved by the testimony of the attorney: *Hager* v. *Shindler*, 29 Id. 63; *Gower* v. *Emery*, 18 Me. 82. If a client, pending the relation, communicates to his attorney a fact foreign to the object for which the attorney was retained, the communication is not privileged, where the attorney is a party to the transaction; especially if it is a fraud or fraudulent transaction, whether aware of the fraudulent intention or not: *Hager* v. *Shindler*, 29 Cal. 63. An attorney must state by whom he was employed: *Satterlee* v. *Bliss*, 36 Id. 507; *Chirac* v. *Reinicker*, 11 Wheat. 280; 1 Greenl. Ev., sec. 245; *Gower* v.

Emery, 18 Me. 82; *Brown* v. *Payson*, 6 N. H. 448; *Beckwith* v. *Benner*, 6 Car. & P. 681. The rule given in the section has a tendency to prevent the full disclosure of the truth, and ought to be strictly construed: *Satterlee* v. *Bliss*, 36 Cal. 507; *Foster* v. *Hall*, 12 Pick. 90; *Gower* v. *Emery*, 18 Me. 82. When the attorney-witness was unable to state whether admissions were made to him as counsel of an accused person, or whilst the latter was under examination as a witness in his own behalf, it was held that the court should have excluded the testimony of its own motion. The accused should have had the benefit of the doubt: *People* v. *Atkinson*, 40 Cal. 285.

Subd. 3. Clergyman or priest.—A priest may be examined with respect to facts brought to his knowledge on a preliminary examination, and with a view to learn whether a party was in a proper condition of mind to make a confession: *Estate of Toomes*, 54 Cal. 509.

1882. *When privileged person must testify.*

Section 1882 was repealed by act approved February 28, 1876; Amendments 1875-6. 105: took effect immediately.

1883. *Judge or a juror may be witness.*

SEC. 1883. The judge himself, or any juror, may be called as a witness by either party; but in such case it is in the discretion of the court or judge to order the trial to be postponed or suspended, and to take place before another judge or jury.

Judge.—When a justice before whom a suit is pending is a witness, it is proper to transfer it: Sec. 833; *Davis* v. *Gallen*, 2 Cal. 360.

Juror.—Although a juror is not disqualified to become a witness, public policy prohibits a juryman from impeaching his own verdict by affidavit: Sec. 657; *People* v. *Doyell*, 48 Cal. 90.

1884. *When interpreter to be sworn.*

SEC. 1884. When a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. Any person, a resident of the proper county, may be summoned by any court or judge to appear before such court or judge to act as interpreter in any action or proceeding. The summons must be served and returned in like manner as a subpœna. Any person so summoned who fails to attend at the time and place named in the summons is guilty of a contempt.

An Act to authorize the appointment of an interpreter of the Italian language and dialects, in criminal proceedings, in cities, and cities and counties, of one hundred thousand inhabitants.

[Approved March 12, 1885; 1885, 108.]

SECTION 1. In all cities, and cities and counties, of over one hundred thousand inhabitants, where an interpreter of the Italian language is necessary, it shall be the duty of the mayor and police judge of such city, or city and county, and of the superior judge of said city and county, or of the county in which said city is situated, or where there are more judges than one, then it shall be the duty of the presiding judge of said superior court, and the mayor and police judge, to appoint an interpreter of the Italian language, who shall be an Italian, and who must also be able to interpret the Italian dialects into the English language, to be employed in criminal proceedings when necessary, in said cities, or cities and counties.

SEC. 2. The said interpreter shall receive a salary of one thousand five hundred dollars per annum, which shall be paid out of the general fund of such city, or city and county.

SEC. 3. This act shall not repeal any act heretofore made and now in force for the appointment of interpreters, except so much of any act which may conflict with this act in the appointment of Italian interpreters.

SEC. 4. This act shall take effect and be in force from and after its passage.

An interpreter may be a witness to testify what was sworn to at a previous trial: *People* v. *Lee Ah Yute*, 60 Cal. 95; and see *People* v. *Ramirez*, 56 Id. 534, the court saying: "We know of no reason why a person who is a witness in a case should be disqualified from acting as interpreter at the examination of other witnesses in the case."

Competency of witness.—An agent is competent to testify as to his authority in the performance of acts for his reputed principal: *Tomlinson* v. *Spencer*, 5 Cal. 291. A restriction upon the competency of a witness must be strictly construed, in favor of life, liberty, and public justice: *People* v. *Awa*, 27 Id. 638. The tendency of modern decisions with reference to the competency of witnesses is to relax rather than to extend the rule of exclusion: *Smith* v. *Richmond*, 19 Id. 476. Where two persons are jointly indicted, and are tried separately, each defendant is a competent witness for his co-defendant: *People* v. *Newberry*, 20 Id. 439. A party who objects to a witness called by the opposite party on the ground of incompetency may adopt either of two modes to show that incompetency. He may examine the witness upon his *voir dire* as to the alleged incompetency, or he may object to the witness on the ground of the incompetency, and prove it by other witnesses: *People* v. *Anderson*, 26 Id. 129. Where a witness stated that he did not understand the "obligation of an oath," and thereupon the judge explained it to him, and he was allowed to testify: *Held*, that he was competent to be a witness: *Fuller* v. *Fuller*, 17 Id. 605. No person is held incompetent to be a witness in this state on account of his opinions on matters of religious belief. The common-law rule in this respect is abrogated: *People* v. *Sanford*, 43 Id. 29. Where the deposition of a witness is taken, objections to his competency must be taken at the time, and not reserved till the trial, or they will be deemed waived: *Jones* v. *Love*, 9 Id. 68. A witness who has a very imperfect knowledge of the language employed in the conversation, and who did not understand the whole of the conversation in which the supposed confession was made by the accused, is incompetent to testify as to such confession: *People* v. *Gelabert*, 39 Id. 663; see Code Civ. Proc., sec. 1879, *supra*.

Examination of witnesses.—Sec. 2044, Code Civ. Proc. It is in the discretion of the court to confine the cross-examination of a witness within reasonable limits, and when protracted to an unreasonable extent, the court may prohibit its continuance: *Reed* v. *Clark*, 47 Cal. 194. And it is no abuse of discretion for the court to refuse to permit a witness in re-examination to be further questioned on a point concerning which he had already fully testified: *Brumagim* v. *Bradshaw*, 39 Id. 24. The general rules are that a witness cannot be cross-examined except as to facts and circumstances connected with matters testified to by him on his direct examination, and that a party who has not yet opened his case cannot do so by a cross-examination of his adversary's witness: *Thornton* v. *Hook*, 36 Id. 223; *People* v. *Miller*, 33 Id. 99; *Aitken* v. *Mendenhall*, 25 Id. 212; see *People* v. *Parton*, 49 Id. 632. The matter of permitting a party to recall a witness for further cross-examination rests greatly in the discretion of the court: *People* v. *Keith*, 50 Id. 137. If a question put to a witness is collateral or irrelevant, his answer cannot be contradicted by the party who asked the question, but is conclusive against him: *People* v. *McKeller*, 53 Id. 65; *People* v. *Bell*, Id. 119. Where the prosecution proves declarations and conversations of defendant, he has the right, on cross-examination, to question the witness as to all he said at the time, and has also the right to call other witnesses to prove all that was said or occurred at the time: *People* v. *Strong*, 30 Id. 151. It is relevant to inquire of a witness on cross-examination whether he has not on a former occasion given a different account of the matter: *People* v. *Robles*, 29 Id. 421. See Code Civ. Proc., sec. 2052; see, generally, *Chamberlin* v. *Vance*, 51 Id. 75; *Harper* v. *Lamping*, 33 Id. 641; *Steinburg* v. *Meany*, 53 Id. 425; *Jackson* v. *Feather R. W. Co.*, 14 Id. 18; *Jones* v. *Love*, 9 Id. 68. A witness on cross-examination may be asked if he has not been convicted of a felony, and the party asking the question may also introduce the record of his conviction: *People* v. *Chin Mook Sow*, 51 Id. 597. A witness may be interrogated as to any circumstance which tends to impeach his credibility, by showing that he is biased against the party conducting the cross-examination, or that he has an interest in the result adverse to such party: *People* v. *Benson*, 52 Id. 380.

Impeachment of witness.—A witness called to impeach another may answer that he would not believe such other on oath: *Stevens* v. *Irwin*, 12 Cal. 306. But it is not essential that such answer should be obtained: *People* v. *Tyler*, 35 Id. 553. Belief or personal knowledge cannot be substituted for general reputation for the purpose of impeaching a witness: *People* v. *Methvin*, 53 Id. 68. It is not an abuse of discretion for the court to limit one side to eight witnesses called to impeach a witness for the other side: *People* v. *Murray*, 41 Id. 66. Evidence of bad character for chastity is not admissible for the purpose of impeaching a witness: *People* v. *Yslas*, 27 Id. 630. Where a witness is sought to be impeached by proof of contradictory statements alleged to have been made by him, the time and place and precise matter of the contradictory statements must be brought to the knowledge of the witness on cross-examination: *Baker* v. *Joseph*, 16 Id. 173; *People* v. *Garnett*. 29 Id. 622; *People* v. *Devine*, 44 Id. 452. And this rule applies to letters written by the witness: *Leonard* v. *Kingsley*, 50 Id. 628; see *People* v. *Doyell*, 48 Id. 85. If one side introduces evidence tending to show that a witness was suborned, the other side may introduce testimony to show the good character of the witness: *People* v. *Ah Fat*, Id. 61. If a question is put to a witness which is collateral or irrelevant, his answer cannot be contradicted by the party who asked the question, but is conclusive against him: *People* v. *Bell*, 53 Id. 119; sec. 1102, note; Code Civ. Proc., sec. 2051, and notes.

Memory of witness.—A book-keeper called as a witness has a right to refer to the books kept by him to refresh his memory: *Treadwell* v. *Wells*, 4 Cal. 260. A witness may, while on the stand, refresh his memory by a reference to a written memorandum made by him at the time or soon after the occurrence which he is relating: *People* v. *Cotta*, 49 Id. 166.

Opinions of witnesses: See Code Civ. Proc., sec. 1870. The opinions of witnesses are generally admissible only when they relate to matters of science or art, or to skill in some particular profession or business: *Hastings* v. *Steamer Uncle Sam*, 10 Cal. 341. But a witness, though not an expert, who details a conversation had between himself and another, may also, in connection therewith, state his opinion, impression, or belief as to the state of mind of such person, as these seemed to the witness at the time of the conversation: *People* v. *Sanford*, 43 Id. 29. There is no rule of law fixing the precise amount of experience or degree of skill necessary to constitute an expert. All that is open to inquiry and proof at the trial. The judge must, in the first instance, pass upon the admissibility of the witness; and then, if admitted, the jury judge of the weight and credit to be given to the testimony. The question is mainly one of fact, and it is only when there appears some error in law in determining the question of admissibility, or when there is no competent evidence to prove proper qualification of the witness, that the decision of the presiding judge is reversed on exceptions: *Commonwealth* v. *Williams*, 105 Mass. 68. A physician testifying as an expert may give an opinion founded upon his reading and study alone: *Taylor* v. *Railway*, 48 N. H. 304; *State* v. *Wood*, 53 Id. 483. On a trial for forgery committed by altering a check, by extracting writing therefrom and writing new words or figures in place thereof, a witness who is not called as a scientific expert may testify as to the chemical effect a powder, found in the possession of the defendants, had on writing in a check similar to that by the alteration of which the forgery was committed; and the check upon which the effect testified to by the witness was produced may be exhibited to the jury: *People* v. *Brotherton*, 47 Cal. 388.

Privileges of witness.—Where the answer of a witness would subject him to criminal punishment, he is not privileged from answering on the ground that his answer would disgrace him, but solely on the ground that he is not compelled to criminate himself: *Ex parte Rowe*, 7 Cal. 184. A party to an action who becomes a witness in his own behalf has the same, and no greater privileges than any other witness. He may refuse to answer a question when the answer would tend to degrade his character: *People* v. *Reinhart*, 39 Id. 449. The privilege

not to answer is personal to the witness, and is not in any sense the privilege of the party calling him: *Clark* v. *Reese*, 35 Id. 89. He must assert his privilege at the proper time, and it is not the duty of the court, independently of any objection on the part of the witness, to inform him that he is not obliged to criminate himself: *People* v. *Hackley*, 24 N.Y. 83; *Commonwealth* v. *Shaw*, 4 Cush. 594. If he discloses a part of the transaction with which he was criminally concerned, without claiming his privilege, he must disclose the whole. He cannot, after voluntarily testifying in chief, decline to be cross-examined, on the ground that his answers may criminate or disgrace him: *People* v. *Freshour*, 55 Cal. 375; *Norfolk* v. *Gaylord*, 28 Conn. 309; *People* v. *Carroll*, 3 Park. Cr. 73; *Commonwealth* v. *Price*, 10 Gray, 472. A defendant who offers himself as a witness waives his right to refuse to furnish evidence against himself, and is subject to an examination on all facts material to the issue: *Commonwealth* v. *Mullen*, 97 Mass. 545. Where a statute provides that a witness shall be compelled to testify in certain cases, notwithstanding his testimony may tend to criminate himself, but that such testimony shall not afterwards be used against him, he may be compelled to so testify, notwithstanding the constitutional provision that no person shall be compelled to be a witness against himself. The fact that detailing a precise account of the circumstances of a given crime would afford the prosecutor some facilities for fastening the guilt upon the actual offender makes no difference: *People* v. *Hackley*, 24 N. Y. 83. "The possession of the circumstances might point out to him [the prosecutor] sources of evidence which he would otherwise be ignorant of, and in this way the witness might be prejudiced. But neither the law nor the constitution is so sedulous to screen the guilty as the argument supposes. If a man cannot give evidence upon the trial of another person without disclosing circumstances which will make his own guilt apparent, or at least capable of proof, though his account of the transactions should never be used as evidence, it is the misfortune of his condition, and not any want of humanity in the law. If a witness objects to a question, on the ground that an answer would criminate himself, he must allege in substance that his answer, if repeated as his admission on his own trial, would tend to prove him guilty of a criminal offense. If the case is so situated that a repetition of it on a prosecution against him is impossible, as where it is forbidden by positive statute, I have seen no authority which holds or intimates that the witness is privileged. It is not within any reasonable construction of the language of the constitutional provision. The term 'criminal case' used in the clause must be allowed some meaning, and none can be conceived other than a prosecution for a criminal offense. But it must be a prosecution against him; for what is forbidden is that he should be compelled to be a witness against himself. Now, if he be prosecuted criminally touching the matter about which he has testified upon the trial of another person, the statute makes it impossible that his testimony given on that occasion should be used by the prosecution on the trial. It cannot therefore be said that in such criminal case he has been made a witness against himself by force of any compulsion used towards him to procure, in the other case, testimony which cannot possibly be used in the criminal case against him:" *Per* Denio, J., in *People* v. *Hackley*, *supra*.

Accomplice as witness: Sec. 1111, note.

Attendance of witnesses: Secs. 1326, 1333.

Co-defendant as witness: Sec. 1100, note.

Co-defendant as witness for the people: Sec. 1099, note.

Contradictory statements: Sec. 1102, note.

Credibility of witness: Sec. 1102, note.

Cross-examination: Sec. 1102, note.

Defendant as witness: Secs. 688, 1323, and note.

Discrediting one's own witness: Sec. 1102, note.

Dying declarations: Sec. 1102, note.

Evidence in criminal actions: Sec. 1102, note.

Evidence of reputation and character: Sec. 1102, note.

Examination of witnesses conditionally: Sec. 1335.

Examination of witnesses on commission: Secs. 1349–1362.

Husband or wife as witness: Sec. 1322, note; Code Civ. Proc., sec. 1881, subd. 1, *supra*.

Impeaching adverse witness: Sec. 1102, note.

Interpreter, when sworn: Code Civ. Proc., sec. 1884, *supra*.

Juror as witness: Sec. 1120, note; Code Civ. Proc., sec. 1883, *supra*.

Rules of examination of witnesses: Code Civ. Proc., secs. 2042–2054.

Separation and exclusion of witnesses: Sec. 1102, note.

Witness defined: Code Civ. Proc., sec. 1878, *supra*.

Witness, duties and rights of: Code Civ. Proc., secs. 2042–2054.

Witness, who competent to be: Code Civ. Proc., sec. 1879, *supra*.

Witness, who incompetent to be: Code Civ. Proc., sec. 1880, *supra*.

1322. *Husband and wife, when not competent witnesses.*

SEC. 1322. Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 451; *took effect July* 1, 1874.]

Husband or wife as witness: See Code Civ. Proc., sec. 1881, subd. 1, and same section in note to sec. 1321, *ante*. A party to an action, by the examination of her husband as a witness on her behalf, waives her objection to his examination by the opposite party upon any of the issues in the action: *Steinburg* v. *Meany*, 53 Cal. 425. In ordinary cases, proof that a man and woman

cohabited a long time as husband and wife, mingled in society as such, and represented each other as such, is, in absence of evidence to the contrary, sufficient proof of a marriage between the parties: *People* v. *Anderson*, 26 Id. 129. A woman living with defendant as his wife, but not married to him, is a competent witness against him: *People* v. *Alviso*, 55 Id. 230. Declarations of a wife made to a third person are not admissible as evidence against her husband: *People* v. *Simonds*, 19 Id. 276. But evidence of acts and exclamations of the prisoner's wife at the time of the killing, and in his presence or hearing, are admissible: *People* v. *Murphy*, 45 Id. 143. When two parties are jointly indicted, but tried separately, the wife of one may be a witness for or against the other, if her husband cannot be benefited or injured by her testimony: *State* v. *Waterman*, 1 Nev. 543.

But this section simply applies to the case where the husband or wife is a party; where two persons are charged by separate information with the same offense, one is entitled to call the wife of the other who is not on trial, and question her concerning matters implicating her husband: *People* v. *Langtree*, 64 Cal. 256.

See an article in 3 Crim. Law Mag. 155, on the departures from the common-law rule rendering husband and wife incompetent to testify against each other.

1323. *Defendant as witness, neglect or refusal not to prejudice.*

SEC. 1323. A defendant in a criminal action or proceeding cannot be compelled to be a witness against himself; but if he offer himself as a witness, he may be cross-examined by the counsel for the people as to all matters about which he was examined in chief. His neglect or refusal to be a witness cannot in any manner prejudice him, nor be used against him on the trial or proceeding. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 451; *took effect July* 1, 1874.]

"In *People* v. *Anderson*, July term, 1870, says Justice Temple, speaking for the court: 'The defendant is not called upon to offer himself to prove any fact in the case, nor can any presumption be properly indulged against him for not doing so.' This chapter is founded upon sections 13, 14, and 15, of the crimes and punishment act of 1850, as they were subsequently amended: Stats. 1855, 105; 1863, 69; an act authorizing husband and wife to become witnesses, etc.: Stats. 1866, 46; an act relating to criminal prosecutions: Stats. 1866, 865; and an act supplementary to the crimes and punishment act of 1850: Stats. 1868, 49. Kindred provisions were, under the former arrangement of our statutes, embodied in the crimes and punishment act; but it is believed that their appropriate place is in that portion of the work relating to criminal procedure, hence the commissioners so placed them: See note to sec. 1102, and cases there cited:" Commissioners' note.

Defendant as a witness.—See a valuable article in 4 Crim. Law Mag. 323. "No person shall . . . . be compelled, in any criminal case, to be a witness against himself:" Const. Cal., art. 1, sec. 13; U. S. Const., amend. 5. The right of defendant to be examined in his own behalf is one which he may exercise or not, and no presumption can be properly indulged in against him for his not doing so: *People* v. *Anderson*, 39 Cal. 703. The fact that defendant becomes a witness in his own behalf does not change or modify the rules of practice, with reference to the proper limits of cross-examination, and does not make him a witness for the state against himself: *People* v. *McGungill*, 41 Id. 429. Where defendant is examined as a witness in his own behalf, the prosecution is entitled to cross-examine him respecting an occurrence about which he testified in chief: 1. For the purpose of showing express malice; and 2. In order to lay a foundation to impeach his credibility: *People* v. *Dennis*, 39 Id. 625. If he become a witness in his own behalf, he has the same and no greater privileges than any other witness. He may refuse to answer a question when the answer would tend to degrade his character: *People* v. *Reinhart*, Id. 449; *People* v. *Johnson*, 57 Id. 571. His general reputation for truth, honesty, and integrity may be shown: *People* v. *Beck*, 58 Id. 212. A defendant who becomes a witness in his own behalf, and undertakes to state all that transpired between two points of time, may be asked on cross-examination if he has omitted anything pertinent to the case, and his attention may be directed to the precise point by asking him if some specified thing did not occur: *People* v. *Russell*, 46 Id. 121. If defendant at the preliminary examination voluntarily becomes a witness in his own behalf, and if it appear that his testimony there given was free from undue influence, it may be used against him on his subsequent trial: *People* v. *Kelley*, 47 Id. 125; *People* v. *Hong Ah Duck*, 61 Id. 387, 394. The failure to become a witness in his own behalf is not a circumstance to be considered by the jury as tending to establish the guilt of defendant, and it is error to permit counsel so to argue against the objections of defendant: *People* v. *Brown*, 53 Id. 66; *People* v. *McGungill*, 41 Id. 429; *People* v. *Tyler*, 36 Id. 522; see also *People* v. *McCauley*, 45 Id. 146; *People* v. *Rodundo*, 44 Id. 538; *People* v. *Bruzzo*, 24 Id. 41; sec. 688, note.

Court commenting on defendant's becoming a witness.—That the court may call the attention of the jury to the defendant's position and tell them to consider it in determining his credibility: *People* v. *Morrow*, 60 Cal. 142, 147; *People* v. *Cronin*, 34 Id. 195, 203; *People* v. *Nichols*, 62 Id. 518, 522; and see S. C., 34 Id. 211.

CHAPTER III.

COMPELLING THE ATTENDANCE OF WITNESSES.

1326. *Subpœna defined, who may issue.*

SEC. 1326. The process by which the attendance of a witness before a court or magistrate is required is a subpœna; it may be signed and issued by:

1. A magistrate before whom a complaint is laid, for witnesses in the state, either on behalf of the people or of the defendant;

2. The district attorney, for witnesses in the state, in support of the prosecution, or for such other witnesses as the grand jury, upon an investigation pending before them, may direct;

3. The district attorney, for witnesses in the state, in support of an indictment or information, to appear before the court in which it is to be tried;

4. The clerk of the court in which an indictment or information is to be tried; and he must, at any time, upon application of the defendant, and without charge, issue as many blank subpœnas, subscribed by him as clerk, for witnesses in the state, as the defendant may require. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 27 (*Ban. ed.* 174); *took effect immediately.*]

Subpœna defined: Code Civ. Proc., sec. 1985.

1327. *Form of subpœna.*

SEC. 1327. A subpœna authorized by the last section must be substantially in the following form:

The people of the state of California to A B:

You are commanded to appear before C D, a justice of the peace of —— township, in —— county (or as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the people of the state of California against E F.

Given under my hand this —— day of ——, A. D. eighteen ——. G H, justice of the peace (or "J K, district attorney," or "By order of the court, L M, clerk," or as the case may be). If books, papers, or documents are required, a direction to the following effect must be contained in the subpœna: "And you are required, also, to bring with you the following" (describing intelligibly the books, papers, or documents required).

1328. *Subpœna, by whom and how served.*

SEC. 1328. A subpœna may be served by any person, but a peace-officer must serve in his county any subpœna delivered to him for service, either on the part of the people or of the defendant, and must, without delay, make a written return of the service, subscribed by him, stating the time and place of service. The service is made by showing the original to the witness personally, and informing him of its contents.

Subpœna, how served in civil cases: Code Civ. Proc., sec. 1987.

1329. *Payment of expenses of witness when from without county, or poor.*

SEC. 1329. When a person attends before a magistrate, grand jury, or court, as a witness in a criminal case, upon a subpœna or in pursuance of an undertaking, and it appears that he has come from a place outside of the county, or that he is poor and unable to pay the expenses of such attendance, the court, at its discretion, if the attendance of the witness be upon a trial, by an order upon its minutes, or, in any other case, the judge at his discretion, by a written order, may direct the county auditor to draw his warrant upon the county treas-

urer in favor of witness for a reasonable sum, to be specified in the order, for the necessary expenses of the witness. [*Amendment, approved March* 8, 1876; *Amendments* 1875–6, 117; *took effect sixtieth day after passage.*]

1330. *Witness residing or served with subpœna out of the county, how compelled to attend.*

SEC. 1330. No person is obliged to attend as a witness before a court or magistrate out of the county where the witness resides, or is served with the subpœna, unless the judge of the court in which the offense is triable, or a justice of the supreme court, or a judge of a superior court, upon an affidavit of the district attorney or prosecutor, or of the defendant or his counsel, stating that he believes the evidence of the witness is material, and his attendance at the examination or trial necessary, shall indorse on the subpœna an order for the attendance of the witness. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 34 (*Ban. ed.* 201); *took effect immediately.*]

1331. *Disobedience to subpœna, etc.*

SEC. 1331. Disobedience to a subpœna, or a refusal to be sworn or to testify as a witness, may be punished by the court or magistrate as a contempt. A witness disobeying a subpœna issued on the part of the defendant, unless he show good cause for his non-attendance, is liable to the defendant in the sum of one hundred dollars, which may be recovered in a civil action.

Contempts: Secs. 1209–1222, Code Civ. Proc.
Refusal of witness to answer: Sec. 166, note.

1332. *Failure to appear, undertaking forfeited.*

SEC. 1332. When a witness has entered into an undertaking to appear, upon his failure to do so the undertaking is forfeited in the same manner as undertakings of bail.

1333. *Who may order temporary removal of imprisoned witnesses.*

SEC. 1333. When the testimony of a material witness for the people is required in a criminal action before a court of record of this state, and such witness is a prisoner in the state prison or in a county jail, an order for his temporary removal from such prison or jail, and for his production before such court, may be made by the court in which the action is pending, or by the judge thereof; but in case the prison or jail is out of the county in which the application is made, such order shall only be made upon the affidavit of the district attorney, or other person, on behalf of the people, showing that the testimony is material and necessary; and even then the granting of the order shall be in the discretion of the court or judge. The order shall be executed by the sheriff of the county in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, to safely keep him, and when he is no longer required as a witness, to return him to the prison or jail whence he was taken; the expense of executing such order shall be paid by the county in which the order shall be made. [*New section, approved April* 1, 1878; *Amendments* 1877–8, 123; *took effect immediately.*]

CHAPTER IV.

EXAMINATION OF WITNESSES CONDITIONALLY.

1335. *Witness to be examined conditionally for the defendant.*

SEC. 1335. When a defendant has been held to answer a charge for a public offense, he may, either before or after an indictment or information, have witnesses examined conditionally on his behalf, as prescribed in this chapter, and

not otherwise. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 27 (*Ban. ed.* 174); *took effect immediately.*]

1336. *In what cases defendant may apply for order.*

SEC. 1336. When a material witness for the defendant is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

Personal attendance of witness.—Where an absent witness for defendant in a criminal action is sick, and it is made to appear that his personal attendance can be procured without unreasonable delay, the statutory mode of taking the testimony of the witness ought not to be forced upon defendant against his will, under the penalty of going to trial without it: *People* v. *Dodge*, 28 Cal. 445.

1337. *Application, how made.*

SEC. 1337. The application must be made upon affidavit, stating:

1. The nature of the offense charged;

2. The state of the proceedings in the action;

3. The name and residence of the witness, and that his testimony is material to the defense of the action;

4. That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

1338. *Application, to whom made.*

SEC. 1338. The application may be made to the court, or to a judge thereof, and must be upon three days' notice to the district attorney. [*Amendment, approved March* 12, 1880; *Amendments* 1880, 5 (*Ban. ed.* 26); *took effect immediately.*]

1339. *Order, when granted, and what to contain.*

SEC. 1339. If the court or judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally, at a specified time and place, and that a copy of the order be served on the district attorney, within a specified time before that fixed for the examination.

1340. *On proof of service, if district attorney absent, examination to proceed.*

SEC. 1340. The order must direct that the examination be taken before a magistrate named therein, and on proof being furnished to such magistrate of service upon the district attorney of a copy of the order, if no counsel appear on the part of the people, the examination must proceed.

1341. *If facts on which order founded disproved, examination not to proceed.*

SEC. 1341. If the district attorney or other counsel appear on behalf of the people, and it is shown to the satisfaction of the magistrate, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the state, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed.

1342. *Attendance of witness how enforced.*

SEC. 1342. The attendance of the witness may be enforced by a subpœna, issued by the magistrate before whom the examination is to be taken.

1343. *Testimony, how taken and authenticated.*

SEC. 1343. The testimony given by the witness must be reduced to writing, and authenticated in the same manner as the testimony of a witness taken in support of an information.

1344. *Deposition to be transmitted to clerk.*

SEC. 1344. The deposition taken must, by the magistrate, be sealed up and transmitted to the clerk of the court in which the action is pending or may come for trial.

1345. *When may be read in evidence.*

SEC. 1345. The deposition, or a certified copy thereof, may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the state. Upon reading the deposition in evidence, the same objections may be taken to a question or answer contained therein as if the witness had been examined orally in court.

Depositions as evidence.—The deposition of a witness given before a coroner's jury, certified and returned to court as required by the statute, is admissible in evidence for the purpose of contradicting the statement of the witness made under oath, on the trial of the person accused of having murdered the deceased: *People* v. *Devine*, 44 Cal. 452. Depositions, to be admissible against a party, must show an actual compliance with all the provisions of the statute: *Williams* v. *Chadbourne*, 6 Id. 559. Taking the testimony of a witness on behalf of the people in a criminal case by deposition is an exception to the rule which entitles the defendant in a criminal action to be confronted with the witnesses against him in the presence of the court, and every substantial requirement of the law which authorizes it must be observed: *People* v. *Mitchell*, 64 Id. 85, 87. When taken by the committing magistrate under section 869, *ante*, they are not admissible against the defendant under section 686, *ante*, unless taken in the manner and form, and certified, as required by the former section, and the certificate must show an actual compliance with all the requirements of the statute. A deposition not certified by the magistrate otherwise than by a *jurat* in the ordinary form is not admissible: *People* v. *Morine*, 54 Id. 575. The reporter's notes of testimony given by a witness upon the trial of a former indictment against the defendant for the same offense, which indictment has been subsequently set aside, the witness being out of the state, are not admissible against the defendant on a second trial for the same offense. A defendant in a criminal case is entitled to be confronted with the witnesses against him, in the presence of the court in which the action is being tried, except in the instances specified in section 686: *People* v. *Chung Ah Chue*, 57 Id. 567. A defendant is not bound to take the deposition of a witness within reach of the process of the court, but if the witness is too unwell to attend the trial, the court should grant a reasonable continuance: *People* v. *Dodge*, 28 Id. 445. Prior to the enactment of this code, the deposition of a witness out of the state could not be taken, but was prohibited: *People* v. *Francis*, 38 Id. 183. The deposition required to be taken by section 869, *ante*, does not constitute the best or only evidence of what the witness swore to. Parol evidence is admissible to show that fact: *People* v. *Curtis*, 50 Id. 95.

A deposition taken under sections 882 and 869 must conform to the requirements thereof. Where the fact that the witness was unable to procure sureties for his appearance at the trial was not shown by the oath of any one, and the deposition itself does not show that it was read over to the witness and signed by him after acknowledging it to be correct, and was certified to by the officer taking it, it will be inadmissible against the defendant: *People* v. *Mitchell*, 64 Cal. 85.

1346. *Deposition of witnesses who are prisoners in other counties.*

SEC. 1346. When a material witness for a defendant, under a criminal charge, is a prisoner in the state prison, or in the county jail of a county other than that in which the defendant is to be tried, his deposition may be taken, on behalf of the defendant, in the manner provided for in the case of a witness who is sick, and the provisions of the Penal Code, commencing with section thirteen hundred and thirty-five and ending with section thirteen hundred and forty-five, shall, so far as applicable, govern in the application for and in the taking and use of such deposition. Such deposition may be taken before any magistrate or notary public of the county in which the jail or prison is situated; or in case the witness is confined in the state prison, and the defendant is unable to pay for taking the deposition, before the warden or clerk of the board of directors of the state prison, whose duty it shall be to act without compensation. Every officer before whom testimony shall be taken by virtue hereof shall have authority to administer, and shall administer, an oath to the witness

that his testimony shall be the truth, the whole truth, and nothing but the truth. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 27 (*Ban. ea.* 174); *took effect immediately.*]

CHAPTER V.

EXAMINATION OF WITNESSES ON COMMISSION.

1349. *Witness residing out of state, when to be examined.*

SEC. 1349. When an issue of fact is joined upon an indictment or information, the defendant may have any material witness, residing out of the state, examined in his behalf, as prescribed in this chapter, and not otherwise. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 28 (*Ban. ed.* 175); *took effect immediately.*]

1350. *When defendant may apply for order to examine, etc.*

SEC. 1350. When a material witness for the defendant resides out of the state, the defendant may apply for an order that the witness be examined on a commission.

1351. *Commission defined.*

SEC. 1351. A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath on interrogatories annexed thereto, to take and certify the deposition of the witness, and to return it according to the directions given with the commission.

1352. *Application made on affidavit.*

SEC. 1352. The application must be made upon affidavit, stating:

1. The nature of the offense charged;
2. The state of the proceedings in the action, and that an issue of fact has been joined therein;
3. The name of the witness, and that his testimony is material to the defense of the action;
4. That the witness resides out of the state.

1353. *Application, to whom made.*

SEC. 1353. The application may be made to the court, or a judge thereof, and must be upon three days' notice to the district attorney. [*Amendment, approved March* 12, 1880; *Amendments* 1880, 6 (*Ban. ed.* 26); *took effect immediately.*]

1354. *Order of commission, when granted, and stay of proceedings.*

SEC. 1354. If the court to whom the application is made is satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony; and the court may insert in the order a direction that the trial be stayed for a specified time, reasonably sufficient for the execution and return of the commission. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 28 (*Ban. ed.* 175); *took effect immediately.*]

Continuance.—The court will not grant a continuance upon the affidavit of defendant stating that he believes he can procure the attendance of witnesses residing out of the state, or their depositions, such affidavit being in the alternative: *People* v. *Francis*, 38 Cal. 183.

1355. *Interrogations, how settled and allowed.*

SEC. 1355. When the commission is ordered, the defendant must serve upon the district attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time at which they will be presented to the

court or judge. The district attorney may in like manner serve upon the defendant or his counsel cross-interrogatories, to be annexed to the commission, with the like notice. In the interrogatories either party may insert any questions pertinent to the issue. When the interrogatories and cross-interrogatories are presented to the court or judge, according to the notice given, the court or judge must modify the questions so as to conform them to the rules of evidence, and must indorse upon them his allowance, and annex them to the commission.

1356. *Direction as to the return of the commission.*

SEC. 1356. Unless the parties otherwise consent, by an indorsement upon the commission, the court or judge must indorse thereon a direction as to the manner in which it must be returned, and may, in his discretion, direct that it be returned by mail or otherwise, addressed to the clerk of the court in which the action is pending, designating his name and the place where his office is kept.

1357. *Commission, how executed.*

SEC. 1357. The commissioner, unless otherwise specially directed, may execute the commission as follows:

1. He must publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth;

2. He must cause the examination of the witness to be reduced to writing, and subscribed by him;

3. He must write the answers of the witness as near as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or add to it until it conforms to what he declares is the truth;

4. If the witness decline answering a question, that fact, with the reason assigned by him for declining, must be stated;

5. If any papers or documents are produced before him and proved by the witness, they, or copies of them, must be annexed to the deposition subscribed by the witness and certified by the commissioner;

6. The commissioner must subscribe his name to each sheet of the deposition, and annex the deposition, with the papers and documents proved by the witness, or copies thereof, to the commission, and must close it up under seal, and address it as directed by the indorsement thereon;

7. If there be a direction on the commission to return it by mail, the commissioner must immediately deposit it in the nearest post-office. If any other direction be made by the written consent of the parties, or by the court or judge, on the commission as to its return, the commissioner must comply with the direction.

A copy of this section must be annexed to the commission. [*Amendment, approved March* 24, 1874; *Amendments* 1873–4, 451; *took effect July* 1, 1874.]

1358. *Commission, how returned when delivered to an agent for that purpose.*

SEC. 1358. If the commission and return be delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed, or to the judge of the court in which the action is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hands of the commissioner, and that it has not been opened or altered since he received it. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 28 (*Ban. ed.* 175); *took effect immediately.*]

1359. *When agent unable to deliver.*

SEC. 1359. If the agent is dead, or from sickness or other casualty unable personally to deliver the commission and return, as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hands of the commissioner.

1360. *When and how filed.*

SEC. 1360. The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending. If the commission and return is transmitted by mail, the clerk to whom it is addressed must receive it from the post-office, and open and file it in his office, where it must remain, unless otherwise directed by the court or judge.

1361. *Commission and return to be open for inspection.*

SEC. 1361. The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same or of any part thereof, on payment of his fees.

1362. *Depositions to be read in evidence.*

SEC. 1362. The depositions taken under the commission may be read in evidence by either party on the trial, upon it being shown that the witness is unable to attend from any cause whatever; and the same objections may be taken to a question in the interrogatories or to an answer in the deposition, as if the witness had been examined orally in court.

Depositions in criminal cases: See *People* v. *Garrett*, 6 Cal. 203; *People* v. *Francis*, 38 Id. 183; *People* v. *Curtis*, 50 Id. 95; Weeks on Depositions, secs. 540–569; see sec. 1345, note.

"**The two preceding chapters** embody the provisions of sections 562–582, inclusive, of the criminal-practice act, Stats. 1851, 212, extended to provide for taking depositions of persons out of the state. In *People* v. *Francis*, 38 Cal. 183, the supreme court held that under the sections cited the defendant could not take the deposition of any witness who resided out of the state. The same reason for a statutory enactment to meet such a case exists as for the provisions relating to taking testimony conditionally. As the law now stands, a defendant is unable to avail himself of the testimony of a witness residing in another state, even though that testimony is absolutely necessary to his exculpation:" Commissioners' note.

CHAPTER VI.

INQUIRY INTO THE INSANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

1367. *Insane person cannot be tried, sentenced, or punished for public offense.*

SEC. 1367. A person cannot be tried, adjudged to punishment, or punished for a public offense while he is insane.

"The words 'an act done by a person in a state of insanity cannot be punished as a public offense,' which were in the original section, are omitted. They prescribed a rule by which responsibility was to be measured, and not a rule of criminal procedure, and for that reason are in substance incorporated in the first part of this code. At common law, one who had committed a capital offense, and who became insane before conviction, could not be arraigned; if he became insane after conviction, he could not be executed: 4 Bla. Com. 24; 1 Whart. Crim. L., sec. 53; see note to sec. 1016, *ante*, 'Insanity,' and cases there cited; also 1 Greenl. Ev. 42:" Commissioners' note.

The test of insanity when used as a defense in a criminal action is, whether or not the defendant at the time of committing the

act charged was laboring under such a defect of reason, from disease of the mind, as not to know the nature or quality of the particular act with which he stands charged, or, if he knew its nature and quality, that he did not know it was wrong: *People* v. *Coffman*, 24 Cal. 230; *People* v. *McDonnell*, 47 Id. 134.

Acquittal on the ground of insanity: Sec. 1167, *ante*.

1368. *When doubts arise as to sanity of defendant, how determined.*

SEC. 1368. When an action is called for trial, or at any time during the trial, or when the defendant is brought up for judgment on conviction, if a doubt arise as to the sanity of the defendant, the court must order the question as to his sanity to be submitted to a jury; and the trial or the pronouncing of the judgment must be suspended until the question is determined by their verdict, and the trial jury may be discharged or retained, according to the discretion of the court, during the pendency of the issue of insanity. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 28 (*Ban. ed.* 175); *took effect immediately.*]

Insanity as a defense generally: Sec. 26.

Order of trial: Sec. 1369.

Present insanity.—No plea of present insanity is required. If at any time during the proceedings in a criminal trial a doubt arises as to the sanity of the defendant, it is the duty of the court, of its own motion, to suspend further proceedings in the case until the question of sanity has been determined: *People* v. *Ah Ying*, 42 Cal. 19.

Refusing to submit question of sanity to a jury.—It is not error for the court, when it entertains no doubt as to the sanity of the prisoner, to deny a motion made when the prisoner is brought up for judgment, to submit the issue of insanity to a jury: *People* v. *Pico*, 62 Cal. 50.

Plea of insanity not to be encouraged.—In *People* v. *De Cleer*, 60 Cal. 382, the plea of insanity was "a plea set up in the absence of all matter tending to show an excuse or justification for the attempted murder, and such pleas are not to be encouraged in courts of justice." And as to proper instruction that jury examine the plea with care, see *People* v. *Pico*, 62 Id. 50.

Irresistible influence defined; does not constitute insanity: *People* v. *Hoin*, 62 Cal. 121.

Acquittal on the ground of insanity: See sec. 1167.

1369. *Order of trial of question of insanity.*

SEC. 1369. The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case, and offer evidence in support of the allegation of insanity;

2. The counsel for the people may then open their case and offer evidence in support thereof;

3. The parties may then respectively offer rebutting testimony only, unless the court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause;

4. When the evidence is concluded, unless the case is submitted to the jury on either or both sides without argument, the counsel for the people must commence, and the defendant or his counsel may conclude the argument to the jury;

5. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately; in other cases the argument may be restricted to one counsel on each side;

6. The court must then charge the jury, stating to them all matters of law necessary for their information in giving their verdict.

Order of trial.—Insanity, when relied upon as a defense in a criminal case, is to be established by the prisoner by preponderating proof. It is an issue upon which he holds the affirmative, and before it can be availed of he is bound to establish not only the fact of insanity, but insanity of the character; *i. e.*, arising from such a cause as in point of law amounts to a defense: *People* v. *Bell*, 49 Cal. 488. It should be clearly established by satisfactory proof: *People* v. *O'Donnell*, 47 Id. 134; *People* v. *Coffman*, 24 Id. 230; *People* v. *Myers*, 20 Id. 518. The above section, by requiring counsel for defendant to open a case, and offer evidence in support of the allegation of insanity, is consistent with the decisions cited.

1370. *Verdict of the jury as to sanity, and proceedings thereon.*

SEC. 1370. If the jury find the defendant sane, the trial must proceed, or judgment be pronounced, as the case may be. If the jury find the defendant insane, the trial or judgment must be suspended until he becomes sane, and the court must order that he be in the mean time committed by the sheriff to the state insane asylum, and that upon his becoming sane he be redelivered to the sheriff. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 29 (*Ban. ed.* 176); *took effect immediately.*]

1371. *If defendant committed, it exonerates bail.*

SEC. 1371. The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person authorized to receive the property of the defendant to a return of any money he may have deposited instead of bail.

1372. *Defendant to be detained in asylum until sane—Notice to district attorney.*

SEC. 1372. If the defendant is received into the asylum, he must be detained there until he becomes sane. When he becomes sane, the superintendent must give notice of that fact to the sheriff and district attorney of the county. The sheriff must thereupon, without delay, bring the defendant from the asylum, and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged.

1373. *Expense of sending, etc., defendant to asylum, where chargeable.*

SEC. 1373. The expenses of sending the defendant to the asylum, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found or information filed; but the county may recover them from the estate of the defendant, if he have any, or from a relative, town, city, or county bound to provide for and maintain him elsewhere. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 29 (*Ban. ed.* 176); *took effect immediately.*]

CHAPTER VII.

COMPROMISING CERTAIN PUBLIC OFFENSES BY LEAVE OF THE COURT.

1377. *Certain offenses for which party injured has civil action may be compromised.*

SEC. 1377. When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it is committed:

1. By or upon an officer of justice, while in the execution of the duties of his office;
2. Riotously;
3. With an intent to commit a felony.

Compounding crimes: Sec. 153, note; see 2 Whart. Crim. L., 8th ed., sec. 1559.

Compromising offenses.—By the ancient common law, where a party robbed not only knew the felon, but also took his goods again, or their value, upon an agreement not to prosecute, he was held an accessary: 4 Bla. Com. 133. And where any other offense was committed, and a party, without leave of the court, made any composition, or took any money or promise of defendant to excuse him, the act was punishable: Id. 136. The law permits a compromise of any offense, though made the subject of a criminal prosecution, for which offense the injured party might recover damages in an action; but, if the offense is of a public nature, no agreement can be valid that is founded on the consideration of stifling a prosecution. Nor can such an agreement be made valid by the court consenting that the prosecution may be compromised: *Keir* v. *Leeman*, 6 Q. B. 308; 2 Ben. & Heard's Lead. Crim. Cas. 216. There can be no compromise of a criminal charge where the person charged has not been arrested nor in any way held to answer the charge: *Saxon* v. *Conger*, 6 Or. 388.

1378. *Compromise by permission of court.*

SEC. 1378. If the party injured appears before the court to which the depositions are required to be returned, at any time before trial, and acknowledges that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense.

Restoration of property embezzled, ground for mitigation of punishment: Sec. 513, *ante.*

1379. *No public offense to be compromised except as herein provided.*

SEC. 1379. No public offense can be compromised, nor can any proceeding or prosecution for the punishment thereof upon a compromise be stayed, except as provided in this chapter.

CHAPTER VIII.

DISMISSAL OF THE ACTION BEFORE OR AFTER INDICTMENT, FOR WANT OF PROSECUTION OR OTHERWISE.

1382. *When action may be dismissed.*

SEC. 1382. The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed in the following cases:

1. When a person has been held to answer for a public offense, if an indictment is not found or an information filed against him, within thirty days thereafter;

2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial within sixty days after the finding of the indictment or filing of the information. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 29 (*Ban. ed.* 176); *took effect immediately.*]

Dismissal of prosecution.—An application of a prisoner for discharge on the ground that no indictment was found or information filed within the time allowed by law must be made, in the first place, to the court where the prosecution against him is pending: *Ex parte Fennessy*, 54 Cal. 101. A dismissal of the action against defendant under this section is in the nature of a judgment of nonsuit; and as defendant has never been in jeopardy, it is not a bar to another prosecution: *Ex parte Clarke*, 54 Id. 412; *Ex parte Cahill*, 52 Id. 463; see also *Ex parte Bull*, 42 Id. 196.

See this section construed in *People* v. *Giesea*, 63 Cal. 345.

1383. *Court may order action to be continued and discharge defendant from custody, when and how.*

SEC. 1383. If the defendant is not charged or tried, as provided in the last section, and sufficient reason therefor is shown, the court may order the action to be continued from time to time, and in the mean time may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge at the time to which the action is continued. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 29 (*Ban. ed.* 176); *took effect immediately.*]

1384. *If action dismissed, defendant to be discharged.*

SEC. 1384. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

1385. *When court may order action dismissed.*

SEC. 1385. The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice, order an action or indict-

ment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

Dismissal of action.—The discharge of a defendant, that he may be a witness against others, must be made at the trial before the defendant has gone into his defense, by the court on its own motion, or upon the application of the district attorney: *People* v. *Indian Peter*, 48 Cal. 251. In criminal cases, the defendant cannot be discharged from the indictment without trial, except in certain particular cases enumerated in the statute: Id.

1386. *Nolle prosequi abolished.*

SEC. 1386. The entry of a nolle prosequi is abolished, and neither the attorney-general nor the district attorney can discontinue or abandon a prosecution for a public offense, except as provided in the last section.

1387. *Dismissal a bar in misdemeanor, but not in felony.*

SEC. 1387. An order for the dismissal of the action, as provided in this chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor; but it is not a bar if the offense is a felony.

Dismissal not a bar in felonies.—Section applied in *People* v. *Schmidt*, 64 Cal. 260.

1388. *Probationary treatment of juvenile delinquents.*

SEC. 1388. Final judgment may be suspended on any conviction, charge, or prosecution for misdemeanor or felony, where in the judgment of the court in which such proceeding is pending there is a reasonable ground to believe that such minor may be reformed, and that a commitment to prison would work manifest injury in the premises. Such suspension may be for as long a period as the circumstances of the case may seem to warrant, and subject to the following further provisions: During the period of such suspension, or of any extension thereof, the court or judge may, under such limitations as may seem advisable, commit such minor to the custody of the officers or managers of any strictly non-sectarian charitable corporation conducted for the purpose of reclaiming criminal minors. Such corporation, by its officers or managers, may accept the custody of such minor for a period of two months (to be further extended by the court or judge should it be deemed advisable), and should said minor be found incorrigible and incapable of reformation, he may be returned before the court for final judgment for his misdemeanor. Such charitable corporation shall accept custody of said minor, as aforesaid, upon the distinct agreement that it and its officers shall use all reasonable means to effect the reformation of such minor, and provide him with a home and instruction. No application for guardianship of such minor by any person, parent, or friend shall be entertained by any court during the period of such suspension and custody, save upon recommendation of the court before which the criminal proceedings are pending first obtained. Such court may further, in its discretion, direct the payment of the expenses of the maintenance of such minor during such period of two months, not to exceed, in the aggregate, the sum of twenty-five dollars ($25), which sum shall include board, clothing, transportation, and all other expenses, to be paid by the county where such criminal proceeding is pending, or direct action to be instituted for the recovery thereof out of the estate of said minor, or from his parents. Such court may also revoke such order of suspension at any time. [*Approved March* 15, 1883; *Statutes and Amendments* 1883, 377.]

CHAPTER IX.

PROCEEDINGS AGAINST CORPORATIONS.

1390. *Summons upon information, etc.*

SEC. 1390. Upon an information or presentment against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

Indictment of corporations: See an article by Adelbert Hamilton in 6 Crim. L. Mag. 317, on this subject.

1391. *Form of summons.*

SEC. 1391. The summons must be substantially in the following form:

COUNTY OF (as the case may be).

The people of the state of California to the (naming the corporation):

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the information of A B (or the presentment of the grand jury of the county, as the case may be), for (designating the offense generally).

Dated at the city (or township) of ——, this —— day of ——, eighteen ——.

G H, Justice of the Peace (or as the case may be).

1392. *When and how served.*

SEC. 1392. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

1393. *Examination of the charge.*

SEC. 1393. At the appointed time in the summons, the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable.

1394. *Certificate of magistrate and return thereof.*

SEC. 1394. After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the deposition and certificate, as prescribed in section eight hundred and eighty-three.

1395. *Grand jury to investigate if magistrate certifies there is sufficient cause.*

SEC. 1395. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed, or the district attorney file an information thereon, as in case of a natural person held to answer. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 29 (*Ban. ed.* 176); *took effect immediately.*]

1396. *Appearance and plea.*

SEC. 1396. If an indictment is found, or information filed, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 29 (*Ban. ed.* 176); *took effect immediately.*]

1397. *Fine on conviction, how collected.*

SEC. 1397. When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of its real and personal property, in the same manner as upon an execution in a civil action.

"**This code makes no distinction** between natural persons and corporations in respect to the manner of commencing criminal actions; they must all be commenced alike, either by an information before a magistrate or by presentment of a grand jury, etc. But from the nature of things, a different mode must be provided for bringing the case of a corporation defendant before the magistrate or grand jury, and for their appearance and plea; hence this chapter:" Code commissioners' note.

CHAPTER X.

ENTITLING AFFIDAVITS.

1401. *Affidavits defectively entitled, valid.*

SEC. 1401. It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment or information, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, information, or appeal in which it is made. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 29 (*Ban. ed.* 177); *took effect immediately.*]

CHAPTER XI.

ERRORS AND MISTAKES IN PLEADINGS AND OTHER PROCEEDINGS.

1404. *When not material.*

SEC. 1404. Neither a departure from the form or mode prescribed by this code in respect to any pleading or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

Immaterial errors.—The failure of the clerk to read the indictment to the jury, and to state defendant's plea, is not fatal error, it appearing that the jury were, from the first, fully informed of the precise charge against defendant, and of the issue raised by his plea of not guilty: *People* v. *Sprague*, 53 Cal. 491. The irregularity of receiving the verdict without first calling over the names of the jurors does not prejudice defendant if the jury were all present and had agreed: *People* v. *Rodundo*, 44 Id. 538. A failure to record the written verdict before it is read and assented to by the jury, and the jury discharged, though an irregularity, is not fatal to the judgment: *People* v. *Gilbert*, 57 Id. 96. The fact that a technical error was committed by the court during a criminal trial is not of itself enough to produce a reversal of the judgment, but it must be such an error as produced an injury to the substantial rights of defendant: *People* v. *Brotherton*, 47 Id. 388; see also *People* v. *Colby*, 54 Id. 37; *People* v. *Swenson*, 49 Id. 388.

Variance in case of forgery held immaterial where the words in the original were "shiped" and "saide," and in the copy were "shipped" and "said:" *People* v. *Cummings*, 57 Cal. 88.

So also for a case of non-prejudicial rejection of evidence, see *People* v. *Iams*, 57 Cal. 115, 126. For non-injurious meaningless instruction: *People* v. *Ah Loy*, Id. 566; so where an objection was sustained to a question, but the witness answered it: *People* v. *Hall*, Id. 569; so in *People* v. *Barnhart*, 59 Id. 384, where the jury found in a less degree than they might have done; and in *People* v. *Murback*, 64 Id. 369, where a clerical error in entering the judgment was held immaterial.

CHAPTER XII.

DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

1407. *When property comes into custody of peace-officer, he must hold it subject to order of magistrate.*

SEC. 1407. When property alleged to have been stolen or embezzled comes into the custody of a peace-officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

1408. *Order for its delivery to owner.*

SEC. 1408. On satisfactory proof of the ownership of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling it, must order it to be delivered to the owner, on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

1409. *When it comes into custody of magistrate, he must deliver to owner.*

SEC. 1409. If property stolen or embezzled comes into custody of the magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

1410. *Court in which trial had may order delivery.*

SEC. 1410. If the property stolen or embezzled has not been delivered to the owner, the court before which a trial is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner.

1411. *If not claimed in six months, to be delivered to county treasurer.*

SEC. 1411. If the property stolen or embezzled is not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody must, on the payment of the necessary expenses incurred in its preservation, deliver it to the county treasurer, by whom it must be sold, and the proceeds paid into the county treasury.

1412. *Receipt by officer for money taken from person arrested for public offense.*

SEC. 1412. When money or other property is taken from a defendant arrested upon a charge of a public offense, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken; one of which receipts he must deliver to the defendant, and the other of which he must forthwith file with the clerk of the court to which the depositions and statement are to be sent. When such property is taken by a police officer of any incorporated city or town, he must deliver one of the receipts to the defendant, and one, with the property, at once to the clerk or other person in charge of the police office in such city or town.

1413. *Duties of person having charge of police office in cities or towns.*

SEC. 1413. The clerk in, or person having charge of, the police office in any incorporated city or town must enter in a suitable book a description of every article of property alleged to be stolen or embezzled, and brought into the office or taken from the person of a prisoner, and must attach a number to each article, and make a corresponding entry thereof.

CHAPTER XIII.

REPRIEVES, COMMUTATIONS, AND PARDONS.

1417. *Power of governor to grant reprieves, commutations, and pardons.*

SEC. 1417. The governor has power to grant reprieves, commutations, and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to the regulations provided in this chapter.

Definitions.—A reprieve is a temporary suspension of the execution of a sentence to punishment; it is a respite from the penalty. A commutation is the substitution of a less onerous punishment for the original one. A pardon is a permanent discharge of defendant from the penal consequences of his crime. The term "amnesty" is nowhere used in this code. It is defined as being an act of the sovereign power which extinguishes the offense as to all participators, and declares that the government will not consider the thing done punishable; hence it operates in favor of all persons involved in it, whether intended and specified or not.

Pardon and amnesty: See very excellent article discussing these powers in 6 Crim. L. Mag. 457. See also a valuable note on the exercise of the pardoning power, in *State* v. *McIntyre*, 59 Am. Dec. 575-581.

Constitutional provisions.—The above and the next succeeding section are taken almost *verbatim* from the constitution: Const. Cal., art. 7, sec. 1. As to power of the president to grant pardons, see U. S. Const., art. 2, sec. 2.

Pardoning power.—The pardoning power, whether exercised under the federal or state constitution, is the same in its nature and effect as that exercised by the representatives of the English crown in this country in colonial times: *People* v. *Bowen*, 43 Cal. 439; *United States* v. *Wilson*, 7 Pet. 159; *Ex parte Wells*, 18 How. 307. Pardon may be granted before trial: *Commonwealth* v. *Hitchman*, 46 Pa. St. 357. The pardon may be granted after the offender has suffered the punishment adjudged for his crime: *People* v. *Bowen*, 43 Cal. 439; *United States* v. *Jones*, 2 Wheel. 451. The pardoning power has no limitations except those found in the constitution and statutes. It may be exercised at any time: *Ex parte Garland*, 4 Wall. 380.

Conditional pardon.—Where the condition of the pardon is that the defendant shall leave the state, and he either does not leave, or, having left, returns, the original sentence revives, and may be enforced: See *Ex parte Marks*, 64 Cal. 29; *Flavel's Case*, 8 Watts & S. 197; *State* v. *Chancellor*, 1 Strobh. 347; *People* v. *Potter*, 1 Park. Cr. 47; *Ex parte Wells*, 18 How. 307. But if the time for departure is specified in the pardon, it will not begin to run during sickness or incapacity: *People* v. *James*, 2 Cal. 57. A pardon with a condition precedent does not operate until the condition is performed: *Flavel's Case*, 8 Watts & S. 197.

Effect of pardon.—A pardon is to be construed favorably to the convict; it not only relieves from punishment, but clears the pardoned from the guilt of the offense: *Ex parte Hunt*, 10 Ark. 284. It removes from the offender the disability to testify where such disability follows conviction of a felony: *People* v. *Bowen*, 43 Cal. 439. A pardon with a condition precedent does not operate until the condition is performed: *Flavel's Case*, 8 Watts & S. 197. But see *Ex parte Hunt*, 10 Ark. 284.

1418. *Governor's power in respect to convictions for treason.*

SEC. 1418. He may suspend the execution of a sentence, upon a conviction for treason, until the case can be reported to the legislature at its next meeting, when the legislature may either pardon, direct the execution of the sentence, or grant a further reprieve; provided, that neither the governor nor the legislature shall have power to grant pardons or commutations of sentence in any case where the convict has been twice convicted of felony, after the first day of January, eighteen hundred and eighty, unless upon the written recommendation of a majority of the judges of the supreme court. [*Amendment, approved February* 18, 1880; *Amendments* 1880, 2 (*Ban. ed.* 7); *took effect immediately.*]

1419. *Governor to communicate to legislature reprieves, commutations, and pardons.*

SEC. 1419. He must, at the beginning of every session, communicate to the legislature each case of reprieve, commutation, or pardon, stating the name of the convict, the crime of which he is convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve, and the reasons for granting the same. [*Amendment, approved February* 18, 1880; *Amendments* 1880, 3 (*Ban. ed.* 7); *took effect immediately.*]

1420. *Report of case, how and from whom required.*

SEC. 1420. When an application is made to the governor for a pardon, he may require the judge of the court before which the conviction was had, or the district attorney by whom the action was prosecuted, to furnish him, without delay, with a statement of the facts proved on the trial, and of any other facts having reference to the propriety of granting or refusing the pardon.

1421. *Notice to district attorney of application for pardon.*

SEC. 1421. At least ten days before the governor acts upon an application for a pardon, written notice of the intention to apply therefor, signed by the per-

son applying, must be served upon the district attorney of the county where the conviction was had, and proof, by affidavit, of the service must be presented to the governor.

1422. *Publication of notice.*

SEC. 1422. Unless dispensed with by the governor, a copy of the notice must also be published for thirty days from the first publication, in a paper in the county in which the conviction was had.

1423. *When two preceding sections not applicable.*

SEC. 1423. The provisions of the two preceding sections are not applicable:

1. When there is imminent danger of the death of the person convicted or imprisoned;

2. When the term of imprisonment of the applicant is within ten days of its expiration.

"This chapter is founded upon an act prescribing the manner of applying for pardons: Stats. 1853, 270. The provisions of an act to confer further powers upon the governor of this state, in relation to the pardon of criminals, Stats. 1864, 356, and of the act amendatory thereof, Stats. 1868, 111, and of an act authorizing the board of state prison directors to recommend the pardoning of convicts, etc., Stats. 1868, 116, are intimately connected with the subject of prison discipline, and for that reason are, with considerable modification (for reasons there given), inserted in the part of this code relating to the state prison:" Code commissioners' note.

TITLE XI.

OF PROCEEDINGS IN JUSTICES' AND POLICE COURTS, AND APPEALS TO THE COUNTY COURT.

CHAPTER I. PROCEEDINGS IN JUSTICES' AND POLICE COURTS..... 1426
II. APPEALS TO COUNTY COURTS..... 1466

CHAPTER I.

PROCEEDINGS IN JUSTICES' AND POLICE COURTS.

1426. *Proceedings must be commenced by complaint.*

SEC. 1426. All proceedings and actions before a justice's or police court, for a public offense of which such courts have jurisdiction, must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person, and property as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint.

"The Penal Code of California works the same change in criminal actions which has been wrought by the Code of Civil Procedure in civil cases: *People* v. *King*, 27 Cal. 507; see *People* v. *Cronin*, 34 Id. 191:" Commissioners' note.

Complaint, when sufficient: See *San Francisco* v. *Randall*, 54 Cal. 408.

Police courts, organization, etc.: See Pol. Code, secs. 4424 et seq.

Justices' courts, organization, etc.: See Code Civ. Proc., secs. 85 et seq.

Petit larceny, superior courts have no jurisdiction of cases of, or of other misdemeanors committed to the justices' court by the legislature: *Ex parte Wallingford*, 60 Cal. 103.

1427. *When warrant of arrest must issue—Form of warrant.*

SEC. 1427. If the justice of the peace, or police justice, is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form:

COUNTY OF ———.

The people of the state of California to any sheriff, constable, marshal, or policeman in this state:

Complaint upon oath having been this day made before me ——, (justice of the peace or police justice, as the case may be), by C D, that the offense of (designating it generally) has been committed, and accusing E F thereof, you are therefore commanded forthwith to arrest the above-named E F, and bring him before me forthwith, at (naming the place).

Witness my hand and seal at ——, this —— day of ——, A. D. ——.

A B.

Arrest, what constitutes: Sec. 834, note.
Arrest, how made: Secs. 835, 842, notes.
Arrest by peace-officer: Sec. 836, and note.
Arrest by private person: Sec. 837, and note.
Arrest by oral order of magistrate: Sec. 838, and note.
Duty of officer or person making arrest: Secs. 847, 848.
Warrant of arrest, form of: Sec. 814.

1428. *Minutes, how kept.*

SEC. 1428. A docket must be kept by the justice of the peace or police justice, or by the clerk of the courts held by them, if there is one, in which must be entered each action and the proceedings of the court therein.

1429. *The plea, and how put in.*

SEC. 1429. The defendant may make the same plea as upon an indictment, as provided in section ten hundred and sixteen. His plea must be oral, and entered in the minutes. If the defendant plead guilty, the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appear to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury, or any information which may be filed by the district attorney. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 30 (*Ban. ed.* 177); *took effect immediately.*]

1430. *Issue, how tried.*

SEC. 1430. Upon a plea other than a plea of guilty, if the parties waive a trial by jury, and an adjournment or change of venue is not granted, the court must proceed to try the case. [*Amendment, approved February* 25, 1880; *Amendments* 1880, 5 (*Ban. ed.* 9); *took effect immediately.*]

Jury trial, how waived: Sec. 1435.

1431. *Change of venue, when granted.*

SEC. 1431. If the action or proceeding is in a justice's court, a change of the place of trial may be had at any time before the trial commences:

1. When it appears from the affidavit of the defendant that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before the justice about to try the case, by reason of the prejudice or bias of such justice, the cause must be transferred to another justice of the same or an adjoining township;

2. When it appears from affidavits that the defendant cannot have a fair and impartial trial, by reason of the prejudice of the citizens of the township, the cause must be transferred to a justice of a township where the same prejudice does not exist.

Bias or prejudice of justice.—In courts of record the bias or prejudice of a judge has been held not to constitute any legal incapacity to sit on the trial of a cause, nor to be a sufficient ground to authorize a change of the place of trial: *People* v. *Williams*, 24 Cal. 31; *People*

v. *Shuler*, 28 Id. 490; *People* v. *Mahoney*, 18 Id. 180. But this is not applicable in its full extent to justices' courts; and change of place of trial may be had on account of bias or prejudice of the justice. Error of judge in previous trial is not evidence of bias or prejudice: *People* v. *Williams*, 24 Id. 31; *People* v. *Shuler*, 28 Id. 490.

Prejudice of the community.—Before a defendant is entitled to a change of the place of trial, by reason of the prejudice of the citizens against him, it is not sufficient that it appear by affidavit that an impartial jury cannot be obtained from a certain portion of the county: *People* v. *Baker*, 1 Cal 403. The fact that the sheriff or his deputies may be prejudiced against defendant is no legal or sufficient ground for changing the place of trial: *People* v. *Shuler*, 28 Id. 490. The fact that thirty or forty persons in the community have contributed small sums to defray the cost of employing counsel to assist in the prosecution of a criminal action, does not show such a general prejudice of the citizens of the county as to entitle the defendant to a change of the place of trial: *People* v. *Graham*, 21 Id. 261; see sec. 1033, note.

Affidavits, on which a motion to change the place of trial in a criminal case is founded, must state the facts and circumstances from which the conclusion is deduced that a fair and impartial trial cannot be had in the county in which the indictment was found. A statement in general terms that a fair and impartial trial cannot be had, or a statement that the deponent verily believes that a fair and impartial trial cannot be had on account of popular excitement and false reports, is insufficient: *People* v. *McCauley*, 1 Cal. 379. Upon an application in a criminal case to change the place of trial on the ground that a fair and impartial trial cannot be had in the county where the prisoner was indicted, it is insufficient to state in the affidavit that a jury cannot be selected from a certain portion of the county who would give the prisoner a fair and impartial trial: *People* v. *Baker*, Id. 403. It would seem that the affidavit of defendant alone, without other evidence, is insufficient to entitle him to a change of venue: *People* v. *Graham*, 21 Id. 261. The affidavits filed in support of the motion should be definite, and should state facts or circumstances from which the court may justly infer that a fair trial cannot be had. The mere opinion or belief of affiants that defendant cannot have a fair trial is insufficient: *People* v. *Yoakum*, 53 Id. 566; *People* v. *Congleton*, 44 Id. 95; see sec. 1034, note.

Discretion in granting or refusing change of venue: See *People* v. *Congleton*, 44 Cal. 95; *People* v. *Yoakum*, 53 Id. 566; *People* v. *Mahoney*, 18 Id. 186.

1432. *Upon change of venue, papers to be transferred—Proceedings on change of venue.*

SEC. 1432. When a change of the place of trial is ordered, the justice must transmit to the justice before whom the trial is to be had all the original papers in the cause, with a certified copy of the minutes of his proceedings; and upon receipt thereof the justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been originally commenced in his court.

Transfer of records, etc., of the action: Sec. 1036.
Duty of court on receipt of records: Sec. 1038.

1433. *Postponement of trial.*

SEC. 1433. Before the commencement of a trial in any of the courts mentioned in this chapter, either party may, upon good cause shown, have a reasonable postponement thereof.

Postponement of trial: Sec. 1052, note.

1434. *Defendant to be present.*

SEC. 1434. The defendant must be personally present before the trial can proceed.

Right of defendant to appear in person: See Const. Cal., art. 1, sec. 13; *People* v. *Harrington*, 42 Cal. 165.

Presence of defendant at the trial: Sec. 1043, note. If an indictment be for misdemeanor, the defendant may appear and plead by attorney, and the trial may be had in his absence: *People* v. *Ebner*, 23 Cal. 158; *People* v. *Budd*, 57 Id. 349.

1435. *Jury trial, how waived.*

SEC. 1435. A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket. The formation of the jury is provided for in Chapter I., Title III., Part I., of the Code of Civil Procedure. [*Amendment, approved February* 25, 1880; *Amendments* 1880, 5 (*Ban. ed.* 9); *took effect immediately.*]

Constitutional provision.—"A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, expressed in open court. . . . . In cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court:" Const. Cal., art. 1, sec. 7.

1436. *Challenges.*

SEC. 1436. The same challenges may be taken by either party to the panel of jurors, or to any individual juror, as on the trial of an indictment for a misdemeanor; but the challenge must in all cases be tried by the court.

Challenge, what is: Sec. 1055, note.
General causes of challenge: Sec. 1072.
Particular causes of challenge: Sec. 1073.
Challenge to individual juror: Sec. 1067.
Challenge to the panel of jurors: Sec. 1058.
Number of peremptory challenges: Sec. 1070.

1437. *Oath of jurors.*

SEC. 1437. The court must administer to the jury the following oath: "You do swear that you will well and truly try this issue between the people of the state of California and A B, the defendant, and a true verdict render according to the evidence."

1438. *Trial, how conducted.*

SEC. 1438. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public and in the presence of the defendant.

Conduct of the trial: Sec. 1093, and notes.
Presence of defendant at the trial: Sec. 1434, notes.

1439. *Court to decide questions of law, but not charge in respect to matters of fact.*

SEC. 1439. The court must decide all questions of law which may arise in the course of the trial, but can give no charge with respect to matters of fact.

Questions of law: See secs. 1124, 1126, in notes.
Court must declare the law: Sec. 1093, subd. 6, note.
Duty of court in charging the jury: Sec. 1127.
Instructions: Sec. 1127, note.
Questions of fact.—Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law: Const. Cal., art. 6, sec. 19.
In case of libel: See secs. 251, 1125.

1440. *Jury may decide in court or retire.*

SEC. 1440. After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless by order of the court, or to ask them whether they have agreed upon a verdict; and that you will return them into court, when they have so agreed, or when ordered by the court."

Deliberations of the jury: Sec. 1128.

1441. *Verdict, how delivered and entered.*

SEC. 1441. The verdict of the jury must in all cases be general. When the jury have agreed on their verdict, they must deliver it publicly to the court, who must enter, or cause it to be entered, in the minutes.

Verdict, general and special: Sec. 1151, *ante.*
Verdict of acquittal: Sec. 1151, in note.
Verdict rendered in defendant's absence: Sec. 1148, note.
Sealed verdict: Sec. 1151, note.
Informal verdict: Secs. 1161, note, 1162, note.
Recording verdict: Secs. 1163, 1164, in notes.

1442. *Verdict when several defendants tried together.*

SEC. 1442. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard

to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

Verdict as to one of several defendants: Sec. 1160.

1443. *Jury, when to be discharged without verdict.*

SEC. 1443. The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

Discharge of jury by consent: Sec. 1140, note.

Discharge, when acquittal or jeopardy: Secs. 687, note, 1139, note.

1444. *If discharged, defendant may be tried again.*

SEC. 1444. If the jury is discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial, and so on, until a verdict is rendered.

Jeopardy: Sec. 687, note.

Retrial: Sec. 1141.

1445. *Proceedings on plea of guilty, or on certiorari.*

SEC. 1445. When the defendant pleads guilty or is convicted, either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 453; *took effect July* 1, 1874.]

Judgment, rendition of: Sec. 1202, note.

Judgment, form of: Sec. 1202, note.

Judgment to be certain and definite: Sec. 1202, note.

Judgment, void and voidable: Sec. 1202, note.

Judgment, arrest of: Secs. 1185, 1186, note.

Judgment on appeal: Sec. 1258, note.

1446. *Fine or imprisonment.*

SEC. 1446. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, in the proportion of one day's imprisonment for every dollar of the fine. [*Amendment, approved March* 7, 1874; *Amendments* 1873–4, 455; *took effect sixtieth day after passage.*]

Judgment of fine: Sec. 1205, note.

Form of judgment.—This section should be considered with the previous one in drawing a judgment of fine and imprisonment: *Ex parte Baldwin*, 60 Cal. 433, where a proper form is indicated by the court.

1447. *Defendant, on acquittal, to be discharged.*

SEC. 1447. When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if the court certify in the minutes that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same within thirty days after the trial.

1448. *Judgment against prosecutor for costs.*

SEC. 1448. If the prosecutor does not pay the costs, or give security therefor, the court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered in a civil action.

1449. *Judgment, where to be rendered.*

SEC. 1449. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two days nor less than six hours after the verdict is rendered, unless the defendant waive the postponement. If postponed, the court may hold the defendant to bail to appear for judgment. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 454; *took effect July* 1, 1874.]

1450. *When defendant may move for new trial or in arrest of judgment.*

SEC. 1450. At any time before judgment, defendant may move for a new trial or in arrest of judgment.

Motion for new trial: Sec. 1182, note.
Motion in arrest of judgment: Secs. 1185, 1452.

1451. *New trial, grounds of.*

SEC. 1451. A new trial may be granted in the following cases:

1. When the trial has been had in the absence of the defendant, unless he voluntarily absent himself, with full knowledge that a trial is being had;

2. When the jury has received any evidence out of court;

3. When the jury has separated without leave of the court, after having retired to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case;

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;

5. When there has been error in the decision of the court, given on any question of law arising during the course of the trial;

6. When the verdict is contrary to law or evidence;

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial; but when a motion for a new trial is made upon this ground, the defendant must produce at the hearing the affidavits of the witnesses by whom such newly discovered evidence is expected to be given.

New trial: Sec. 1181, note.
Trial in absence of defendant: Sec. 1181, note.
Separation of jury: Sec. 1181, note.
Misconduct of jury: Sec. 1181, note.
Erroneous rulings: Sec. 1181, note.
Verdict by improper means: Sec. 1181, note.
Verdict contrary to evidence: Sec. 1181, note.
Newly discovered evidence: Sec. 1181, note.

1452. *Grounds of motion in arrest of judgment.*

SEC. 1452. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

Arrest of judgment on defendant's motion: Sec. 1185, note.
Arrest of judgment by court without motion: Sec. 1186, note.
Effect of arresting judgment: Sec. 1187, note.

1453. *Judgment to be entered in the minutes.*

SEC. 1453. If the judgment is not arrested, or a new trial granted, judgment must be pronounced at the time appointed and entered in the minutes of the court.

Judgment, rendition of: Secs. 1202, note, 1445.

1454. *If judgment of acquittal or imposing fine only, defendant to be discharged.*

SEC. 1454. If judgment of acquittal is given, or judgment imposing a fine only, without imprisonment, for non-payment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

1455. *Judgment of imprisonment, how executed.*

SEC. 1455. When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff, marshal, or other officer, which is a sufficient warrant for its execution.

Execution: See secs. 1213, and note, and 1216.

1456. *Judgment that defendant be imprisoned until he pay fine, how executed.*

SEC. 1456. When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine is paid, he must be held in custody during the time specified in the judgment, unless the fine is sooner paid.

Execution of judgment of fine or imprisonment: Sec. 1215.

1457. *Fines, disposition of.*

SEC. 1457. Upon payment of the fine, the officer must discharge the defendant, if he is not detained for any other legal cause, and apply the money to the payment of the expenses of the prosecution, and pay over the residue, if any, within ten days, to the county or city treasurer, according as the offense is prosecuted in a justice's or police court. If a fine is imposed, and paid before commitment, it must be applied as prescribed in this section.

Disposition of fines: Sec. 1570. If the judgment impose a fine without costs, or if a fine be collected, but the costs imposed by the judgment be not collected, in either case the costs of the officers are to be paid out of the fine collected: *Petty* v. *County Court San Joaquin Co.*, 45 Cal. 245; *Co. of Los Angeles* v. *City of Los Angeles*, 3 West Coast Rep. 441; *Los Angeles* v. *Morgan*, Id. 444.

1458. *Defendant may be admitted to bail.*

SEC. 1458. The defendant, at any time after his arrest, and before conviction, may be admitted to bail. The provisions of this code relative to bail are applicable to bail in justices' or police courts.

Bail: Secs. 822, 1268.

1459. *Subpœnas.*

SEC. 1459. The justice or judge of either of the courts mentioned in this chapter may issue subpœnas for witnesses, as provided in section thirteen hundred and twenty-six, and punish disobedience thereof, as provided in section thirteen hundred and thirty-one.

Witness must attend: Sec. 2064, Code Civ. Proc.

1460. *Entitling affidavits.*

SEC. 1460. The provisions of section fourteen hundred and one, in respect to entitling affidavits, are applicable to proceedings in the courts mentioned in this chapter.

1461. *Police courts defined.*

SEC. 1461. The term "police courts," as used in this and the succeeding chapter, includes police judges' courts, police courts, and all courts held by mayors or recorders in incorporated cities or towns.

CHAPTER II.

APPEALS TO SUPERIOR COURTS.

1466. *Appeals, when allowed.*

SEC. 1466. Either party may appeal to the superior court of the county from a judgment of a justice's or police court, in like case and for like cause as appeals may be taken to the supreme court. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 34 (*Ban. ed.* 201); *took effect immediately.*]

Appeal by defendant: Sec. 1237, and note. **Appeal by the people:** Sec. 1238, and note.

1467. *Appeals, how taken, heard, and determined.*

SEC. 1467. The appeal is taken, heard, and determined as provided in Title IX., Part II., of this code.

Appeal, how taken: Sec. 1240, and note. **Judgment on appeal:** Sec. 1258, and note.

1468. *Statement on appeal.*

SEC. 1468. The appeal to the superior court from the judgment of a justice's or police court is heard upon a statement of the case settled by the justice or police judge, embodying such rulings of the court as are excepted to, which statement must be filed with and settled by the court within ten days after filing notice of appeal. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 34 (*Ban. ed.* 201); *took effect immediately.*]

Transcript on appeal: Sec. 1246, note.

Statement, when unnecessary.—A statement of the case is unnecessary if the pleadings and docket show the error relied on: *People* v. *Maguire*, 26 Cal. 635.

1469. *If new trial granted, in what court had.*

SEC. 1469. If a new trial is granted upon appeal, it must be had in the superior court. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 35 (*Ban. ed.* 201); *took effect immediately.*]

New trial, where had: See *People* v. *Maguire*, 26 Cal. 635.

1470. *Proceedings if appeal dismissed or judgment affirmed.*

SEC. 1470. If the appeal is dismissed or the judgment affirmed, a copy of the order of dismissal or judgment of affirmance must be remitted to the court below, which may proceed to enforce its sentence.

Remittitur: Sec. 1264, note.

Power of appellate court after remittitur: Sec. 1265, note; see *Ex parte Toland*, 54 Cal. 344.

TITLE XII.

OF SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

CHAPTER I. OF THE WRIT OF HABEAS CORPUS 1473
II. OF CORONERS' INQUESTS AND DUTIES OF CORONERS 1510
III. OF SEARCH-WARRANTS 1523
IV. PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE 1547
V. MISCELLANEOUS PROVISIONS RESPECTING SPECIAL PROCEEDINGS OF A CRIMINAL NATURE 1562

CHAPTER I.

OF THE WRIT OF HABEAS CORPUS.

1473. *Who may prosecute writ.*

SEC. 1473. Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint. [*Amendment, approved March* 30, 1874; *Amendments* 1873-4, 454; *took effect July* 1, 1874.]

Nature of the writ.—The writ of *habeas corpus* is that legal process which is employed for the summary vindication of the right of personal liberty when illegally restrained. It is directed to the person detaining another, and commands him to produce the body of the prisoner or person detained, together with the day and cause of his caption and detention, to submit to and receive whatsoever the court or judge awarding the writ might consider in that behalf: Hurd on Habeas Corpus, 2d ed., 129. The presentation of a petition for a writ of *habeas corpus* is the institution of a cause on behalf of the petitioner; and the allowance or refusal of the process, as well as the subsequent disposition of the prisoner, is matter of law, and not of discretion: *Ex parte Milligan*, 4 Wall. 2.

Privilege of, not to be suspended.—The privilege of the writ of *habeas corpus* shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension: Const. Cal., art. 1, sec. 5; U. S. Const., art. 1, sec. 9. The power to suspend being thus conceded, the question then arises, To which department of the government is its exercise intrusted? On the one hand, it has been contended that suspending the privilege

of the writ of *habeas corpus* is a civil executive act; that the power to suspend belongs to the president or the governor, as the case may be; and that no legislative action is necessary in order to make the suspension legal. It is said, however, that the opinion is almost universal; that the legislative department of the government must take the initiative, and pass a statute which either directly produces the effect of suspension, or which authorizes the executive to withdraw the privilege of the writ: Pomeroy on Constitutional Law, 5th ed., sec. 707.

The suspension of the writ does not authorize the arrest of any one, but simply denies to one arrested the privilege of this writ in order to obtain his liberty. Nor does the suspension of the privilege of the writ of *habeas corpus* suspend the writ itself. The writ issues as a matter of course, and on its return the court decides whether the applicant is denied the right of proceeding any further: *Ex parte Milligan*, 4 Wall. 2.

Office of the writ.—*Habeas corpus* is undoubtedly the proper remedy for every unlawful imprisonment, both in civil and criminal cases; but an imprisonment is not unlawful in the sense of this rule merely because the process or order under which the party is held has been irregularly issued or is erroneous. Process which has been irregularly issued may be set aside by the court or officer by whom it was issued, and erroneous judgments and orders may be reversed on appeal or writ of error. The writ of *habeas corpus* has not been given for the purpose of reviewing judgments or orders made by a court, or judge or officer acting within their jurisdiction. To put it to such a use would be to convert it into a writ of error, and confer upon every officer who has authority to issue the writ appellate jurisdiction over the orders and judgments of the highest judicial tribunals in the land. Establish the doctrine that the judgments and orders of courts may be reviewed on *habeas corpus*, upon the ground of error, and appeals for the correction of errors may be dispensed with in all cases in which the arrest or imprisonment of persons is allowed. Every criminal action, every civil action in which an arrest is given, and every proceeding for a contempt, could be brought to the supreme court by writs of *habeas corpus*. Not only that, but, as already suggested, inferior tribunals would be called upon to review the judgments of superior tribunals, and tribunals of equal grade to interfere and review each other's proceedings. Such a rule would render all judicial proceedings amorphous, and lead to the utmost confusion and disorder. It is well settled that *habeas corpus* can be put to no such use, and that its functions, where the party who has appealed to its aid is in custody under process, do not extend beyond an inquiry into the jurisdiction of the court by which it was issued, and the validity of the process upon its face: *Ex parte McCullough*, 35 Cal. 97; *People* v. *Cassels*, 5 Hill, 167; *People* v. *Sheriff of New York*, 7 Abb. Pr. 96; *Ex parte Gibson*, 31 Cal. 619; *Ex parte McLaughlin*, 41 Id. 211; *Ex parte Hartman*, 44 Id. 32; *Ex parte Max*, Id. 579; *Ex parte Granice*, 51 Id. 375; *Ex parte Farnham*, 3 Col. 545. The functions of the writ of *habeas corpus*, when a party who has appealed to its aid is in custody under process, do not extend beyond an inquiry into the jurisdiction of the court by which it was issued, and the validity of the process upon its face: *Ex parte Cohn*, 55 Cal. 193.

Writ not a writ of error.—It is no ground for the release of a prisoner on *habeas corpus* that some error or irregularity has occurred in the course of the proceedings, which, if presented to an appellate court by way of appeal or writ of error, must necessarily result in a reversal of the judgment: Freeman on Judgments, 3d ed., sec. 620. Where a party is held in custody under an order which is regular on its face, and which the court had power to make, he cannot be discharged upon *habeas corpus* because of error in making such order: His remedy in such case is by appeal: *Ex parte Hartman*, 44 Cal. 32. Where, on an indictment for assault with intent to commit murder, the jury found the defendant guilty of an "assault to do great bodily injury," which verdict was received and recorded, and the jury, under instructions from the court, again retire and find the defendant guilty of an "assault with a deadly weapon, with an intent to inflict bodily injury, without considerable provocation," and the latter verdict is also received and recorded, and the prisoner is adjudged guilty of a felony and sentenced to the state prison, it is mere error, which must be corrected by appeal, and does not render the judgment void so as to warrant the discharge of the prisoner on *habeas corpus: Ex parte Max*, Id. 579; but see *Ex parte Ah Cha*, 40 Id. 426. The questions whether an order holding an accused person to answer on a criminal charge is erroneous, or was irregularly entered, cannot be considered on an application for the discharge of the accused on *habeas corpus: Ex parte Granice*, 51 Id. 375. The evidence before the lower court will not be considered for the purpose of determining whether a matter of defense was so proved that the prisoner ought to have been acquitted: *Griffin* v. *State*, 5 Tex. App. 475; *Ex parte Bird*, 19 Cal. 130. If the point made is one which might have been urged upon demurrer, or by motion in arrest of judgment, the decision of the lower court, while it may be erroneous, is not void, and the judgment cannot be treated as a nullity: *Ex parte Shaffenburg*, 4 Dill. C. C. 271. The functions of the writ, where the party appealing to its aid is in custody, under process, do not extend beyond an inquiry into the jurisdiction of the court by which it was issued, and the validity of the process upon its face: *Ex parte McCullough*, 35 Cal. 97. A judgment of conviction cannot be impeached on *habeas corpus*, by showing that the indictment upon which it is based was not found by a grand jury: *Ex parte Twohig*, 13 Nev. 302; *State* v. *Fenderson*, 28 La. Ann. 82. The writ of *habeas corpus* is not a writ of error, nor can it be used to authorize the exercise of appellate jurisdiction: *Ex parte Winston*, 9 Nev. 71. Where, in the regular course of judicial proceedings before a court of general jurisdiction, a party, having notice of the proceedings, has been ordered by the judgment to pay a certain sum of money, and in default of obedience to the order has been committed for contempt, he cannot on *habeas corpus* question the regularity of the proceedings, nor the propriety of the judgment on the facts. The power of the court below to make the order is the only question that will be considered: *Ex parte Perkins*, 18 Cal. 60.

1474. *Application for, how made.*

SEC. 1474. Application for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and must specify:

1. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming all the parties if they are known, or describing them if they are not known;

2. If the imprisonment is alleged to be illegal, the petition must also state in what the alleged illegality consists;

3. The petition must be verified by the oath or affirmation of the party making the application.

Who may apply for writ.—All persons imprisoned, or under actual restraint, on any pretense whatever, have the right to a writ of *habeas corpus* in order that they may have proper relief: *Williamson* v. *Lewis*, 39 Pa. St. 9. The usual course of proceeding is for the court, on the application of the prisoner for a writ of *habeas corpus*, to issue the writ, and on its return to hear and dispose of the case; but where the cause of imprisonment is fully shown by the petition, the court may, without issuing the writ, consider and determine whether, upon the facts presented in the petition, the prisoner, if brought before the court, would be discharged: *Ex parte Milligan*, 4 Wall. 2. Every restraint upon a man's liberty is, in the eye of the law, an imprisonment, wherever may be the place or whatever may be the manner in which the restraint is effected: 1 Kent's Com. 631; Hurd on Habeas Corpus, 2d ed., 200. Persons discharged on bail will not be considered as restrained of their liberty so as to be entitled to a writ of *habeas corpus* directed to their bail: *Rex* v. *Arnold*, 3 Yeates, 263.

Although the person imprisoned has an undoubted right to make the application for the writ, yet it is not necessary that it should proceed directly from him. An agent or friend may make it in behalf of the prisoner; the wife in behalf of her husband: Hurd on Habeas Corpus, 2d ed., 203. But mere volunteers, who do not appear in behalf of the prisoner, or show some right to represent him, will not be listened to: *Rex* v. *Clarke*, 3 Burr. 1363; *Ex parte Child*, 29 Eng. L. & Eq. 259. Persons having a right to the custody of the prisoner may also make the application. It may be granted at the instance of the parent for the child: *People* v. *Mercein*, 3 Hill, 399. Or of the guardian for the ward, or master for the apprentice: *Commonwealth* v. *Downes*, 24 Pick. 227; *Commonwealth* v. *Hammond*, 10 Id. 274; *People* v. *Pillow*, 1 Sandf. 672.

Application for writ, what should contain.—The application for a writ of *habeas corpus* should not state mere conclusions of law. An application was denied when it contained an allegation that an affidavit on which the judgment of the supreme court was based was insufficient, without a copy of the affidavit being furnished: *Ex parte Nye*, 8 Kan. 99. Where the petition for the writ fails to state any facts from which it can be inferred that the petitioner's imprisonment is illegal, it is insufficient to authorize the issuance of the writ: *Ex parte Allen*, 12 Nev. 87. If the cause of the imprisonment is fully shown by the petition, the court may, without issuing the writ, consider and determine whether, upon the facts presented in the petition, the prisoner, if brought before the court, would be discharged: *Ex parte Milligan*, 4 Wall. 2.

1475. *Habeas corpus, by whom issued and before whom returnable.*

SEC. 1475. The writ of habeas corpus may be granted:

1. By the supreme court, or any justice thereof, upon petition by or on behalf of any person restrained of his liberty in this state. When so issued, it may be made returnable before the court, or any justice thereof, or before any superior court, or any judge thereof.

2. By the superior courts, or a judge thereof, upon petition by or on behalf of any person restrained of his liberty in their respective counties. [*Amendment, approved February* 18, 1880; *Amendments* 1880, 4 (*Ban. ed.* 8); *took effect immediately.*]

Jurisdiction to issue.—The supreme court has power to issue writs of *habeas corpus*. Each of the justices of the supreme court also has power to issue writs of *habeas corpus* to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the supreme court, or before any superior court in the state, or before any judge thereof: Const. Cal., art. 6, sec. 4; Code Civ. Proc., sec. 51. The superior courts and their judges have power to issue writs of *habeas corpus* on petition by or on behalf of any person in actual custody in their respective counties: Id., art. 6, sec. 5; Code Civ. Proc., sec. 76. Although any judge of a court of record may issue the writ, yet the legislature never intended that a party imprisoned should have the privilege of selecting from the judiciary of the whole state the individual to whom he prefers to make his

application, however distant from the place of his detention. The rule is that a party desiring the writ should make application to the local judge therefor, and if he refuses to act, resort may then be had to judges outside the county, or to the supreme court: *Ex parte Ellis*, 11 Cal. 222.

1476. *Writ must be granted without delay.*

SEC. 1476. Any court or judge authorized to grant the writ, to whom a petition therefor is presented, must, if it appear that the writ ought to issue, grant the same without delay.

Res adjudicata.—The doctrine of *res adjudicata* has no application to proceedings on writ of *habeas corpus*, where a discharge of the prisoner is refused. The decision of one judge or court refusing a discharge is not a bar to another application for the same writ before another judge or court: *In re Ring*, 28 Cal. 247; *In re Perkins*, 2 Id. 424. The current of authority in the state courts is that the decision on *habeas corpus*, where the prisoner is not discharged, is not final, but may be renewed, and the reason given therefor is that no appeal or writ of error lies from such decision: Hurd on Habeas Corpus, 2d ed., 573. Where, however, the prisoner is brought before a judge having authority to issue the writ on petition for *habeas corpus*, and the judge acquires jurisdiction of the person and subject-matter, his discharge of the prisoner, whether the decision be erroneous or not, being in favor of personal liberty, is final and conclusive, and the prisoner cannot be again arrested and committed on the same charge: *Ex parte Jilz*, 64 Mo. 205. But see case of Yates, 4 Johns. 317.

1477. *Writ, what to contain.*

SEC. 1477. The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him to have the body of such person before the court or judge before whom the writ is returnable, at a time and place therein specified.

1478. *How served.*

SEC. 1478. If the writ is directed to the sheriff or other ministerial officer of the court out of which it issues, it must be delivered by the clerk to such officer without delay, as other writs are delivered for service. If it is directed to any other person, it must be delivered to the sheriff, and be by him served upon such person by delivering the same to him without delay. If the person to whom the writ is directed cannot be found, or refuses admittance to the officer or person serving or delivering such writ, it may be served or delivered by leaving it at the residence of the person to whom it is directed, or by affixing it to some conspicuous place on the outside either of his dwelling-house or of the place where the party is confined or under restraint.

1479. *Proceedings upon disobedience to writ.*

SEC. 1479. If the person to whom the writ is directed refuses, after service, to obey the same, the court or judge, upon affidavit, must issue an attachment against such person, directed to the sheriff or coroner, commanding him forthwith to apprehend such person and bring him immediately before such court or judge; and upon being so brought, he must be committed to the jail of the county until he makes due return to such writ, or is otherwise legally discharged.

Return to the writ: Sec. 1480, note.

1480. *Return, what to contain.*

SEC. 1480. The person upon whom the writ is served must state in his return, plainly and unequivocally:

1. Whether he has or has not the party in his custody, or under his power or restraint;

2. If he has the party in his custody or power, or under his restraint, he must state the authority and cause of such imprisonment or restraint;

3. If the party is detained by virtue of any writ, warrant, or other written

authority, a copy thereof must be annexed to the return, and the original produced and exhibited to the court or judge on the hearing of such return;

4. If the person upon whom the writ is served had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but has transferred such custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority such transfer took place;

5. The return must be signed by the person making the same, and, except when such person is a sworn public officer, and makes such return in his official capacity, it must be verified by his oath.

Return to the writ.—The answer in writing, signed by the party to whom the writ is addressed, stating the time and cause of the caption and detention of the prisoner, and his production before the court or judge; or if the prisoner be not produced, then the reasons for not producing him, constitute the return: Hurd on Habeas Corpus, 2d ed., 235. Such return must be made without delay, and if not so made, may be enforced by attachment. The return should be properly addressed to the court to whom the writ is returnable, but a mistake in the address or direction will not be deemed material: *Brass Crosby's Case*, 2 W. Black. 754. See secs. 1401, 1404. The production of the body of the prisoner constitutes an essential element of the proceeding on writ of *habeas corpus*. The supreme court of Massachusetts has said that without the production of the body the writ is without effect, the case has no *status*, and the court will hear no evidence upon the question of the validity of the imprisonment: *Commonwealth* v. *Chandler*, 11 Mass. 83.

1481. *Body must be produced, when.*

SEC. 1481. The person to whom the writ is directed, if it is served, must bring the body of the party in his custody or under his restraint, according to the command in the writ, except in the cases specified in the next section.

1482. *When hearing may proceed without production of body.*

SEC. 1482. When, from sickness or infirmity of the person directed to be produced, he cannot, without danger, be brought before the court or judge, the person in whose custody or power he is may state that fact in his return to the writ, verifying the same by affidavit. If the court or judge is satisfied of the truth of such return, and the return to the writ is otherwise sufficient, the court or judge may proceed to decide on such return, and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

1483. *Hearing on return.*

SEC. 1483. The court or judge before whom the writ is returned must, immediately after the return, proceed to hear and examine the return, and such other matters as may be properly submitted to their hearing and consideration.

1484. *Proceedings on the hearing.*

SEC. 1484. The party brought before the court or judge, on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge. The court or judge must thereupon proceed in a summary way to hear such proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require, and have full power and authority to require and compel the attendance of witnesses, by process of subpœna and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case.

Cited as to evidence petitioner on *habeas corpus* may introduce to contradict return: *Ex parte Cottrell*, 59 Cal. 417, 422.

1485. *When court may discharge.*

SEC. 1485. If no legal cause is shown for such imprisonment or restraint, or for the continuation thereof, such court or judge must discharge such party from custody or restraint under which he is held.

Discharge.—Power of court to discharge where petitioner is held under a void judgment: *Ex parte Bernert*, 62 Cal. 533.

Discharge with or without bail.—The supreme court deems itself justified in discharging a person with or without bail only where the testimony of material witnesses for the people is clearly shown to be false: *Matter of Troia*, 64 Cal. 152.

1486. *When to remand party.*

SEC. 1486. The court or judge, if the time during which such party may be legally detained in custody has not expired, must remand such party, if it appears that he is detained in custody:

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or,

2. By virtue of the final judgment or decree of any competent court of criminal jurisdiction, or of any process issued upon such judgment or decree.

1487. *Grounds of discharge in certain cases.*

SEC. 1487. If it appears on the return of the writ that the prisoner is in custody by virtue of process from any court of this state, or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restrictions of the last section:

1. When the jurisdiction of such court or officer has been exceeded;

2. When the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge;

3. When the process is defective in some matter of substance required by law, rendering such process void;

4. When the process, though proper in form, has been issued in a case not allowed by law;

5. When the person having the custody of the prisoner is not the person allowed by law to detain him;

6. Where the process is not authorized by any order, judgment, or decree of any court, nor by any provision of law;

7. Where a party has been committed on a criminal charge without reasonable or probable cause.

Subd. 3. Defective commitment.—Where the offense charged is so defectively set forth in the warrant of commitment that the prisoner cannot be held thereunder, but it appears from the papers that he ought not to be discharged, the judge hearing the application on *habeas corpus* ought to hold the party for examination, and cause the complainant and witnesses to attend before him for that purpose: *Ex parte Branigan*, 19 Cal. 133. A commitment by a justice of the peace, holding a party to appear before a grand jury to answer upon a charge of murder, should state the name of the person alleged to have been murdered; but if it do not do so, the omission will not entitle the accused to be discharged on *habeas corpus*: *Ex parte Bull*, 42 Id. 196. Where it appears on *habeas corpus* that the commitment under which the prisoner is held is void, and it further appears that there is a valid judgment of imprisonment against him, rendered by a competent court of criminal jurisdiction, of which a certified copy may be obtained, it will be the duty of the court not to immediately discharge the prisoner, but to order him retained until a certified copy of the judgment has been obtained, or a reasonable length of time has been allowed for that purpose, and then, if obtained, to remand him: *Ex parte Gibson*, 31 Id. 619.

Subd. 4. Commitment not allowed by law.—Where, upon application to be discharged by *habeas corpus*, it appears that the prisoner, by virtue of a commitment in due form, is detained to answer an indictment, the court or judge may proceed to inquire whether the indictment charges any offense known to the law; and upon determining that it does not, may discharge the prisoner: *In re Corryell*, 22 Cal. 178. Where the constitutionality of the law under which the conviction was had is questioned, it is usually held that the court in which the conviction was had necessarily affirmed the constitutionality of the law in ren-

dering its judgment of conviction, and that this affirmance cannot be avoided on *habeas corpus: In re Harris*, 47 Mo. 164; *In re Underwood*, 30 Mich. 502; *Ex parte Fisher*, 6 Neb. 309. The court will, however, on *habeas corpus*, take judicial notice that the facts set forth in the complaint constitute no crime under the general laws of the state, and if it affirmatively appear from the records of an inferior court that a person was tried and sentenced to be punished for an act which is not a crime, the judgment is absolutely void, and the person in custody under such judgment is entitled to his discharge: *Ex parte Kearney*, 55 Cal. 212.

Subd. 7. Commitment without reasonable or probable cause.—"It has been suggested to omit the seventh subdivision, because there was no provision requiring magistrates to have the testimony taken down, and therefore the subdivison was inoperative. Instead of omitting the subdivision, the commissioners have required the magistrate to reduce the testimony to writing: See sec. 869:" Statement by the commissioners. The general rule is that if the commitment be legally sufficient in all respects, the prisoner will be remanded, or, in proper cases, admitted to bail. But the rule is not invariable: *Ex parte Bollman*, 4 Cranch, 75; 1 Ch. Crim. L. 129. Even if the commitment be regular, the court will look into the depositions, to see if there be sufficient ground laid to detain the party in custody, and if not, will discharge or bail him: *People* v. *Smith*, 1 Cal. 9.

Commitments for contempt.—A party committed for refusing to answer questions propounded to him as a witness, under an order that he stand committed till he answers the questions, will be discharged on *habeas corpus* where it appears that the suit has abated: *Ex parte Rowe*, 7 Cal. 175. Where, pending an application for a writ of mandate to a county treasurer, his term of office ceases, but judgment is afterwards rendered against him, and the writ issued, the judgment and writ have no force against his successor, and proceedings against such successor for contempt, for refusing to obey the writ, are void for lack of jurisdiction, and on *habeas corpus* he will be discharged: *Ex parte Tinkum*, 54 Id. 201. But a commitment under a conviction for contempt is a commitment in execution, and the judgment of conviction cannot ordinarily be attacked under the writ of *habeas corpus* except for such gross defects as render the proceeding void: *Ex parte Kearney*, 7 Wheat. 38; *Yates's Case*, 4 Johns. 318; *McLaughlin's Case*, 5 Watts & S. 275; *Ex parte Adams*, 25 Miss. 883; *State* v. *Woodfin*, 5 Ired. 199. Where, upon an application for discharge upon a writ of *habeas corpus*, by an executor who was in custody under an order of the superior court, adjudging him guilty of contempt in refusing to pay over money under a decree of distribution, it was held that since the court had jurisdiction and the proceedings were regular and valid on their face, the petitioner was not entitled to be discharged: *Ex parte Cohn*, 55 Cal. 193. After a discharge from imprisonment for contempt of court, the party cannot again be imprisoned for the same offense: *Grady* v. *Superior Court*, 64 Id. 156.

Requisition for fugitive from justice.—The judiciary have jurisdiction by *habeas corpus* to investigate cases where a party is arrested as a fugitive from justice, escaped from another state. The courts possess no power to control the executive discretion in surrendering fugitives from justice, nor can they compel a surrender in such case, yet, the executive having acted, that discretion may be examined into in every case where the liberty of the citizen is involved. But it seems that the court will not require that the affidavit on which the requisition is issued should set forth the crime charged with all the legal exactness necessary to be observed in an indictment: *In re Manchester*, 5 Cal. 237.

1488. *Not to be discharged for defect of form in warrant.*

SEC. 1488. If any person is committed to prison, or is in custody of any officer on any criminal charge, by virtue of any warrant of commitment of a justice of the peace, such person must not be discharged on the ground of any mere defect of form in the warrant of commitment.

1489. *Court may examine witnesses and discharge, hold to bail, or recommit.*

SEC. 1489. If it appears to the court or judge, by affidavit or otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings as may be shown to the court or judge, that the party is guilty of a criminal offense, or ought not to be discharged, such court or judge, although the charge is defective or unsubstantially set forth in such process or warrant of commitment, must cause the complainant or other necessary witnesses to be subpœnaed to attend at such time as ordered, to testify before the court or judge; and upon the examination, he may discharge such prisoner, let him to bail if the offense be bailable, or recommit him to custody, as may be just and legal.

1490. *Writ for purpose of bail.*

SEC. 1490. When a person is imprisoned or detained in custody on any criminal charge, for want of bail, such person is entitled to a writ of habeas

corpus for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined.

1491. *Judge may take bail.*

SEC. 1491. Any judge before whom a person who has been committed on a criminal charge may be brought on a writ of habeas corpus, if the same is bailable, may take an undertaking of bail from such person as in other cases, and file the same in the proper court.

Habeas corpus for purpose of bail.—Where the prisoner has been indicted, his guilt will be assumed, on *habeas corpus*, for the purpose of obtaining a reduction of bail: *Ex parte Duncan*, 53 Cal. 410; *Ex parte Ryan*, 44 Id. 555. After the prisoner is convicted, bail should not be allowed, except by the judge of the court where the conviction was had, or by a justice of the supreme court, and then only when circumstances of an extraordinary character have intervened: *Ex parte Marks*, 49 Id. 680; *Ex parte Smallman*, 54 Id. 35. One who after conviction, and pending an appeal, applies upon *habeas corpus* to be admitted to bail, must state in his petition facts upon which the court can exercise an intelligent discretion in determining the question; such as that injustice has been done him during the trial, that the appeal is taken in good faith, etc.: *Ex parte Voll*, 41 Id. 29.

There is no appeal from an order of a judge admitting a party to bail on a hearing on *habeas corpus: People* v. *Schuster*, 40 Id. 627. See also *Ex parte Hung Sin*, 54 Id. 102; *People* v. *Smith*, 1 Id. 9; *Ex parte Cook*, 35 Id. 107; Hurd on Habeas Corpus, 430.

1492. *Judge, when to remand.*

SEC. 1492. If a party brought before the court or judge on the return of the writ is not entitled to his discharge, and is not bailed where such bail is allowable, the court or judge must remand him to custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was is legally entitled thereto.

1493. *Person in illegal may be committed to legal custody.*

SEC. 1493. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, the judge or court may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

1494. *Disposition of party, pending proceedings on return.*

SEC. 1494. Until judgment is given on the return, the court or judge before whom any party may be brought on such writ may commit him to the custody of the sheriff of the county, or place him in such care or under such custody as his age or circumstances may require.

1495. *Defect of form in writ immaterial, when.*

SEC. 1495. No writ of habeas corpus can be disobeyed for defect of form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the court or judge before whom he is to be brought.

1496. *Imprisonment after discharge, in what cases permitted.*

SEC. 1496. No person who has been discharged by the order of the court or judge upon habeas corpus can be again imprisoned, restrained, or kept in custody for the same cause, except in the following cases:

1. If he has been discharged from custody on a criminal charge, and is afterwards committed for the same offense, by legal order or process;

2. If, after a discharge for defect of proof, or for any defect of the process, warrant, or commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the same offense.

Contempt.—After a discharge from imprisonment for contempt, the party cannot be again imprisoned for the same contempt: *Grady* v. *Superior Court*, 64 Cal. 156.

1497. *Warrant may issue instead of writ, in certain cases.*

SEC. 1497. When it appears to any court or judge, authorized by law to issue the writ of habeas corpus, that any one is illegally held in custody, confinement, or restraint, and that there is reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, such court or judge may cause a warrant to be issued, reciting the facts, and directed to the sheriff, coroner, or constable of the county, commanding such officer to take such person thus held in custody, confinement, or restraint, and forthwith bring him before such court or judge, to be dealt with according to law.

1498. *Warrant may include person charged with illegal detention.*

SEC. 1498. The court or judge may also insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

1499. *Warrant, how executed.*

SEC. 1499. The officer to whom such warrant is delivered must execute it by bringing the person therein named before the court or judge who directed the issuing of such warrant.

1500. *Return and hearing on.*

SEC. 1500. The person alleged to have such party under illegal confinement or restraint may make return to such warrant as in case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs, and trial may thereupon be had as upon a return to a writ of habeas corpus.

1501. *Party may be discharged or remanded.*

SEC. 1501. If such party is held under illegal restraint or custody, he must be discharged; and if not, he must be restored to the care or custody of the person entitled thereto.

1502. *Writ and process may issue and be served at any time.*

SEC. 1502. Any writ or process authorized by this chapter may be issued and served on any day or at any time.

1503. *By whom issued, and when returnable.*

SEC. 1503. All writs, warrants, process, and subpœnas authorized by the provisions of this chapter must be issued by the clerk of the court, and, except subpœnas, must be sealed with the seal of such court, and served and returned forthwith, unless the court or judge shall specify a particular time for any such return.

1504. *Where returnable.*

SEC. 1504. All such writs and process, when made returnable before a judge, must be returned before him at the county seat, and there heard and determined. [*Amendment, approved February* 18, 1880; *Amendments* 1880, 4 (*Ban. ed.* 8); *took effect immediately.*]

1505. *Damages, by whom recovered, for failure to issue or obey writ.*

SEC. 1505. If any judge, after a proper application is made, refuses to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ may be directed refuses obedience to the command thereof, he shall forfeit and pay to the person aggrieved a sum not exceeding five thousand dollars, to be recovered by action in any court of competent jurisdiction.

"This chapter is based upon the *habeas corpus* act of 1850, and acts amendatory thereof: Stats. 1850, 334; 1854, 268; 1859, 15; 1863, 334:" Commissioners' note.

CHAPTER II.

OF CORONERS' INQUESTS AND DUTIES OF CORONERS.

1510. *Coroner to summon jury to inquire into cause of death in certain cases.*

SEC. 1510. When a coroner is informed that a person has been killed, or has committed suicide, or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, he must go to the place where the body is, cause it to be exhumed, if it has been interred, and summon not less than nine nor more than fifteen persons, qualified by law to serve as jurors, to appear before him forthwith, at the place where the body of deceased is, to inquire into the cause of the death.

Coroner's inquest.—The statutes of this state concerning coroners are but declaratory of the common law. The holding of inquests by them is in the performance of functions judicial in their character, so much so, that they are protected under the principles which protect judicial officers from responsibility in a civil action brought by a private person: *Garnett* v. *Ferrand*, 6 Barn. & Cress. 611. The practice to be pursued by the officer in taking and certifying testimony at an inquest held under the laws of this state, is the same as that pursued at the common law: *People* v. *Devine*, 44 Cal. 459. The latter course is pointed out by Gurney, B., in *Regina* v. *Plummer*, 1 Car. & Kir. 604. The testimony of the witnesses should be reduced to writing, and then read over to them and signed by them. A deposition when so taken is admissible in evidence for the purpose of contradicting the statement of a wi ness made under oath on the trial of the person accused of having murdered the deceased: *People* v. *Devine*, 44 Cal. 452; *Rex* v. *Oldroyd*, Russ. & Ry. C. C. 88; *Commonwealth* v. *Hawkins*, 3 Gray, 463; *Stephens* v. *People*, 19 N. Y. 549; see sec. 1515, *post*, as to filing testimony.

1511. *Jurors to be sworn.*

SEC. 1511. When six or more of the jurors attend, they must be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death; and to render a true verdict thereon, according to the evidence offered them, or arising from the inspection of the body.

1512. *Witnesses to be summoned.*

SEC. 1512. Coroners may issue subpœnas for witnesses, returnable forthwith, or at such time and place as they may appoint, which may be served by any competent person. They must summon and examine as witnesses every person who, in their opinion or that of any of the jury, has any knowledge of the facts, and may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death.

1513. *Witnesses compelled to attend.*

SEC. 1513. A witness served with a subpœna may be compelled to attend and testify, or punished by the coroner for disobedience, in like manner as upon a subpœna issued by a justice of the peace.

The accused is not a witness within this section: *People* v. *Taylor*, 59 Cal. 640, 651.

1514. *Verdict of jury in writing—What to contain.*

SEC. 1514. After inspecting the body and hearing the testimony, the jury must render their verdict and certify the same by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where, and by what means he came to his death; and if he was killed, or his death occasioned by the act of another, by criminal means, who is guilty thereof.

1515. *Testimony in writing—Where filed.*

SEC. 1515. The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner, or under his direction, and forthwith

filed by him, with the inquisition, in the office of the clerk of the superior court of the county. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 35 (*Ban. ed.* 201); *took effect immediately.*]

Testimony of witness: Sec. 1510 in note. The testimony of witnesses only is required to be reduced to writing, nothing is said in regard to the statements of the accused; his voluntary statement need not be reduced to writing to be admitted: *People* v. *Taylor*, 59 Cal. 640, 650; see *People* v. *Herbert*, 61 Id. 545; that statements of accused before the coroner's jury are admissible, see also *People* v. *Cents*, 50 Id. 95.

1516. *Exception.*

SEC. 1516. If, however, the person charged with the commission of the offense is arrested before the inquisition can be filed, the coroner must deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who must return the same, with the depositions and statement taken before him, to the office of the clerk of the superior court of the county. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 35 (*Ban. ed.* 201); *took effect immediately.*]

1517. *Coroner in issue warrant, when.*

SEC. 1517. If the jury find that the person was killed by another, under circumstances not excusable or justifiable by law, or that his death was occasioned by the act of another by criminal means, and the party committing the act is ascertained by the inquisition, and is not in custody, the coroner must issue a warrant, signed by him, with his name of office, into one or more counties, as may be necessary for the arrest of the person charged.

1518. *Form of warrant.*

SEC. 1518. The coroner's warrant must be in substantially the following form:

COUNTY OF ——.

The people of the state of California, to any sheriff, constable, marshal, or policeman in this state:

An inquisition having been this day found by a coroner's jury before me, stating that A B has come to his death by the act of C D, by criminal means (or as the case may be, as found by the inquisition), you are therefore commanded forthwith to arrest the above-named C D, and take him before the nearest or most accessible magistrate in this county.

Given under my hand this —— day of ——, A. D. eighteen ——.

E F, Coroner of the County of ——.

1519. *How served.*

SEC. 1519. The coroner's warrant may be served in any county, and the officer serving it must proceed thereon, in all respects, as upon a warrant of arrest on an information before a magistrate, except that when served in another county it need not be indorsed by a magistrate of that county.

"The preceding chapter is based upon sections 4 to 14, inclusive, of the act of 1850, Stats. 1850, 264, with the amendment of 1862, to section 4 incorporated: Stats. 1862, 521, sec. 1:" Commissioners' note.

CHAPTER III.

ON SEARCH-WARRANTS.

1523. *Search-warrant defined.*

SEC. 1523. A search-warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace-officer, commanding him to search for personal property, and bring it before the magistrate.

Search-warrants, use of.—They "were never recognized by the common law as processes which might be availed of by individuals in the course of civil proceedings, or for the maintenance of any mere private right; but their use was confined to cases of public prosecutions, instituted and pursued for the suppression of crime or the detection and punishment of criminals. Even in those cases, if we may rely on the authority of Lord Coke, their legality was formerly doubted; and Lord Camden said that they crept into the law by imperceptible practice. But their legality has long been considered to be established, on the ground of public necessity; because, without them, felons and other malefactors would escape detection:" *Robinson* v. *Richardson*, 13 Gray, 454, *per* Merrick, J. In this country, the right to such process depends upon statute, subject to the limitations imposed by constitutional provisions. In this state no such warrant can be issued, "but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized:" State Const., art. 1, sec. 19. A like provision exists in the constitution of the United States, amendment 4.

1524. *Upon what grounds it may issue.*

SEC. 1524. It may be issued upon either of the following grounds:

1. When the property was stolen or embezzled; in which case it may be taken on the warrant, from any place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or from any person in whose possession it may be;

2. When it was used as the means of committing a felony; in which case it may be taken on the warrant from the place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or from any person in whose possession it may be;

3. When it is in the possession of any person with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, or from any place occupied by him or under his control, or from the possession of the person to whom he may have so delivered it.

The provisions of section 643 of the criminal practice act have been extended, to the end that a search-warrant may be issued to search for and take property when it was used as the means of committing a felony, or where it is in the possession of a person with intent to use it in the commission of a felony, and to kindred cases. See also N. Y. Crim. Prac., sec. 862; see, particularly, Livingston's Crim. Code, p. 481, art. 43, rules 1, 6. In the higher class of crimes the testimony is almost invariably circumstantial, and no class of circumstances is more important, in cases of that description, in detecting and punishing guilt, than tracing to the possession of the defendant property either used as the means of committing the offense or intended to be used for that purpose. It is now usually obtained by the officers of justice by the assumption of a responsibility on their part which has no express sanction of law; and though they are rarely prosecuted for assuming this responsibility, it is rather owing to the fact that the accused party seldom escapes punishment than to the legality of the act. The propriety of legalizing the search for and seizure of property, under these circumstances, cannot admit of doubt. Mr. Livingston, in his criminal code, in accordance with this idea, provided that search-warrants may be issued to seize forged instruments in writing, or counterfeited coin intended to be passed, or the instruments or materials prepared for making them, arms or munitions prepared for the purpose of insurrection or riot, and weapons, implements, or other articles necessary to be produced on the trial of one accused of a crime: Edward Livingston, State of Louisiana; Livingston's Crim. Code, p. 481, art. 43, rules 1, 6.

1525. *It cannot be issued but upon probable cause.*

SEC. 1525. A search-warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

1526. *Magistrates must examine, on oath, complainant, etc.*

SEC. 1526. The magistrate must, before issuing the warrant, examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

1527. *Depositions, what to contain.*

SEC. 1527. The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

1528. *When to issue warrant.*

SEC. 1528. If the magistrate is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search-warrant, signed by him with his name of office, to a peace-officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate.

1529. *Form of warrant.*

SEC. 1529. The warrant must be in substantially the following form:

COUNTY OF ——.

The people of the state of California to any sheriff, constable, marshal, or policeman in the county of ——:

Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, according to section fifteen hundred and twenty-five, or, if the affidavit be not positive, that there is probable cause for believing that—stating the ground of the application in the same manner), you are therefore commanded, in the day-time (or at any time of the day or night, as the case may be, according to section fifteen hundred and thirty-three), to make immediate search on the person of C D (or in the house situated ——, describing it or any other place to be searched, with reasonable particularity, as the case may be), for the following property: (describing it with reasonable particularity); and if you find the same or any part thereof, to bring it forthwith before me at (stating the place).

Given under my hand, and dated this —— day of ——, A. D. eighteen ——.

E F, Justice of the Peace (or as the case may be).

Form of the search-warrant.—The search-warrant should be specific in terms, both as to the place to be searched and the persons or things to be seized. General warrants have always been considered illegal: *Money* v. *Leach*, 1 W. Black. 555; *Bell* v. *Clapp*, 10 Johns. 263; *Sandford* v. *Nichols*, 13 Mass. 286; *State* v. *Spencer*, 38 Me. 30. To command a search of the "suspected place" is not sufficient: *People* v. *Holcomb*, 3 Park. Cr. 656. Neither is a "building" a sufficient description of the place to be searched: *State* v. *Spencer*, 38 Me. 30. The description should be as certain in the warrant as would be necessary in a deed to convey such place: *Jones* v. *Fletcher*, 41 Id. 254; *State* v. *Bartlett*, 47 Id. 388. A warrant which describes the place to be searched as "a place of common resort" is insufficient: *Commonwealth* v. *Liquors*, 97 Mass. 332. So a warrant directing the dwelling-house of a person to be searched only authorizes a search of the house which such person occupies, and not a house owned by him but occupied by another person: *McGlinchy* v, *Barrows*, 41 Me. 74; see *Flaherty* v. *Longley*, 61 Id. 420. It is no objection to the warrant that several different places are directed to be searched: *Gray* v. *Davis*, 27 Conn. 447. A description of the place to be searched, by giving the owner's name, and a description of the kind of liquors which he was believed to keep, is sufficient: *State* v. *Thompson*, 44 Iowa, 399.

Description of things.—The things to be searched for should also be specifically described. Where property was described as "three cases of misses' and women's boots of the value of one hundred dollars, a lot of oak-tanned soles of the value of fifty dollars, and ten sides of sole leather of the value of forty dollars," this was held sufficient: *Dwinnels* v. *Boynton*, 3 Allen, 310. So where the description was, "certain spirituous and intoxicating liquors, to wit, rum, gin, brandy, wine, alcohol, and ale," it was held sufficient: *State* v. *Whisky*, 54 N. H. 164. But a description of certain "goods, wares, and merchandise," without any specification of their character, quality, number, or weight, or any other circumstance tending to distinguish them, was held not to be such a particular description as the constitution requires: *Sandford* v. *Nichols*, 13 Mass. 285.

Officer must follow warrant.—It is incumbent upon the officer to strictly observe the directions of the warrant. If he be directed to seize only stolen sugar, and seize tea, he is a trespasser: *Price* v. *Messenger*, 2 Bos. & Pul. 158. But he may seize goods described in the warrant, although they turn out not to be the particular ones which the person procuring it

had in mind: *Stone* v. *Dana*, 3 Met. 98. Although, as a general rule, the officer should only seize such goods as are specified, yet there may be cases in which he would be justified in taking others: *Crozier* v. *Cundy*, 9 Dow. & Ry. 224; *State* v. *Brennan's Liquors*, 25 Conn. 278.

1530. *By whom served.*

SEC. 1530. A search-warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

1531. *Officer may break open door, etc., to execute warrant.*

SEC. 1531. The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

1532. *May break open door, etc., to liberate person acting in his aid.*

SEC. 1532. He may break open any outer or inner door or window of a house, for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

1533. *When warrant may be served in the night.*

SEC. 1533. The magistrate must insert a direction in the warrant that it be served in the day-time, unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

1534. *Within what time warrant must be executed.*

SEC. 1534. A search-warrant must be executed and returned to the magistrate who issued it, within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

1535. *Officer to give receipt for property taken.*

SEC. 1535. When the officer takes property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

1536. *Property, how disposed of.*

SEC. 1536. When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in sections fourteen hundred and eight and fourteen hundred and thirteen, inclusive. If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of section fifteen hundred and twenty-four, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense in respect to which the property taken is triable.

1537. *Return of warrant and delivery of inventory of property taken.*

SEC. 1537. The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

1538. *Copy of inventory, to whom delivered.*

SEC. 1538. The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

1539. *Proceedings, if grounds of warrant controverted.*

SEC. 1539. If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated in the manner prescribed in section eight hundred and sixty-nine.

1540. *Property, when to be restored to person from whom taken.*

SEC. 1540. If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

1541. *Depositions, warrant, etc., to be returned by magistrate to county court.*

SEC. 1451. The magistrate must annex together the depositions, the search-warrant and return, and the inventory, and return them to the next term of the county court having power to inquire into the offenses in respect to which the search-warrant was issued, at or before its opening on the first day.

1542. *When magistrate may direct defendant to be searched.*

SEC. 1542. When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order, or to the order of the court in which the defendant may be tried.

CHAPTER IV.

PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

1547. *Rewards for apprehension of fugitives from justice.*

SEC. 1547. The governor may offer a reward, not exceeding one thousand dollars, payable out of the general fund, for the apprehension:

1. Of any convict who has escaped from the state prison; or,

2. Of any person who has committed, or is charged with the commission of, an offense punishable with death.

An Act imposing certain duties upon the governor of the state.

[Approved April 3, 1876; 1875-6, 855.]

Reward for stage-robbers.

SECTION 1. The governor shall offer a standing reward of three hundred dollars ($300) for the arrest of each person engaged in the robbery of, or in an attempt to rob any person or persons upon, or having in charge, in whole or in part, any stage-coach, wagon, railroad train, or other conveyance engaged at the time in carrying passengers, or any private conveyance within this state; the reward to be paid to the person or persons making the arrest, immediately upon the conviction of the person or persons so arrested; but no reward shall be paid except after such conviction.

SEC. 2. This act shall take effect from and after its passage.

Fugitives from justice—Some points of practice: See an article in 3 Crim. Law Mag., 787.

Interstate extradition.—The right of extradition between the several states of the United States is derived from article 4, section 2, of the federal constitution, which provides that "a person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime." This provision, being a part of the

supreme law of the land, is a part of the law of each state, and state officers whose duty it is to adjudicate or execute the laws are governed by it the same as by every other law in force: *Matter of Romaine*, 23 Cal. 585. The particular object to be effected by the constitutional provision just cited is to supply the defect in the administration of criminal justice, resulting from the rule that courts have no control over offenses committed beyond their jurisdiction. The state to which the fugitive escapes having no power to try the offense, it was enjoined by the constitution to surrender him to the state having jurisdiction, simply on demand, in order that, within the United States, the administration of criminal justice might be perfect: *Brown* v. *Maryland*, 12 Wheat. 419, 437. The states can pass no laws inconsistent with this constitutional provision, or with the legislation of congress, for its execution. Both are parts of "the supreme law of the land," and neither can be invaded or superseded by the legislative power of the states: Spear on Extradition, 243. See the subject recently discussed, with respect to the power of state courts over the person of one held on a writ issued pursuant to a requisition from the governor of another state, in the various phases of the celebrated *Robb Case*, as reported in 64 Cal. 431, 9 Saw. 568, and in the supreme court of the United States, under the title of *Robb* v. *Connolly*, 111 U. S. 624. See also an article by C. W. Slack in 4 West Coast Rep. 265.

"Person charged."—The constitution of the United States nowhere defines the word "charged," as used in section 2 of article 4, or tells how the charge should be made or authenticated. Congress, however, by an act passed February 12, 1793, the substance of which has been re-enacted as section 5278 of the revised statutes, provided that the charge must be in the form of "an indictment found or affidavit made before a magistrate of any state or territory" in which the crime is alleged to have been committed, and that "a copy" of such indictment or affidavit, "certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged has fled," shall be produced as evidence that the charge has been made in the proper manner: Spear on Extradition, 231. This act was declared constitutional in *Prigg* v. *Commonwealth*, 16 Pet. 539, "in all its leading provisions." The executive is the sole judge of the authenticity of the affidavit: *Matter of Manchester*, 5 Cal. 237.

"With treason, felony, or other crime." This clause of the constitution embraces every act forbidden and made punishable by the law of the state, and the right of a state to demand the surrender of fugitives from justice extends to all cases of the violation of its criminal law: *People* v. *Brady*, 56 N. Y. 182; *Morton* v. *Skinner*, 48 Ind. 123; *Taylor* v. *Taintor*, 16 Wall. 366; *Johnston* v. *Riley*, 13 Ga. 97; *Matter of Voorhees*, 32 N. J. L. 141. It embraces "every act forbidden and made punishable by a law of the state," "every offense made punishable by a law of the state in which it was committed," "every offense known to the law of the state from which the party charged had fled," "without any exception as to the character and nature of the crime:" *Commonwealth* v. *Dennison*, 24 How. 66, 99–103, *per* Taney, C. J.; 1 Bish. Crim. Pr., sec. 220. The object of connecting the words "treason" and "felony" with the words "other crime," was for the purpose of excluding the possible construction that political offenders were not to be surrendered the same as others: *Commonwealth* v. *Dennison*, 24 How. 66. Misdemeanors are included as well as felonies: *Morton* v. *Skinner*, 48 Ind. 123; *People* v. *Brady*, 56 N. Y. 182, 188; *Brown's Case*, 112 Mass. 409. So if the criminal act be such in the state demanding the fugitive, although not in the state surrendering, it is sufficient: *Johnston* v. *Riley*, 13 Ga. 97; *In re Voorhees*, 32 N. J. L. 141.

"Flees from justice."—To flee from justice, within the constitutional provision above cited, means that a crime shall have been committed in the state making the demand, by one "who shall flee" to the other state: *Ex parte Smith*, 3 McLean, 121; *In re Heyward*, 1 Sandf. 701. It is sufficient to constitute a fleeing that the person charged with crime has gone beyond the jurisdiction, so that there has been no reasonable opportunity to prosecute him since the facts were known; and it is immaterial that he has gone to the place of his domicile: *Kingsbury's Case*, 106 Mass. 223. So when a person infringes the criminal laws of a state, and departs therefrom, without waiting to abide the consequences of such act, he is a fugitive from justice within the meaning of the constitutional provision in question: *Matter of Voorhees*, 32 N. J. L. 141. Whether a person who commits a crime in a state in which he is not personally present can be transferred against his will to the place of its commission, to be tried, is stated by Mr. Bishop not to have been judicially determined: 1 Bish. Crim. Proc., sec. 220; see *State* v. *Chapin*, 17 Ark. 561.

"Demand of the executive."—The language of the constitution is that the delivery of a fugitive criminal must be made "on demand of the executive authority of the state from which he fled." Mr. Spear states this demand to be "a formal written and official application made by the governor of the state or territory in which the crime is charged to have been committed, upon the governor of the state or territory to which the criminal is assumed to have fled, and in which he is found. The order of the constitution is demand first and delivery afterwards:" Spear on Extradition, 263. Without such demand, no executive, acting under this authority, has any power to make a delivery. The arrest of the fugitive and his detention by an order of the court does not of itself give any executive jurisdiction over the case: Id. The power must proceed from the demand, and nothing else: *Botts* v. *Williams*, 17 B. Mon. 687. It must also appear that judicial proceedings have been commenced against the person demanded, in the state from which the demand is made: *Ex parte White*, 49 Cal. 433.

Delivered, to whom.—Section 5278 of the revised statutes of the United States provides that after the demand, above referred to, has been made upon the executive of a state, it shall be his duty "to cause him," the fugitive, "to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear."

Evidence of the charge.—The evidence

required, that a person whose delivery is demanded has been charged with the commission of a crime, is "a copy of an indictment found or an affidavit made before a magistrate of any state or territory, charging the person with having committed" the particular crime therein set forth. This copy must be "certified as authentic by the governor, or other chief magistrate, of the state or territory from whence the person so charged has fled:" U. S. R. S., sec. 5278. Three things are necessary to give the executive jurisdiction: 1. The fugitive must be demanded by the executive of the state from which he fled; 2. A copy of the indictment found, or an affidavit made before a magistrate, charging the fugitive with having committed the crime; 3. Such copy of the indictment or affidavit must be certified as authentic by the executive: *Matter of Clark*, 9 Wend. 212. The executive of the state issuing the requisition is the only proper judge of the authenticity of the affidavit; *Matter of Manchester*, 5 Cal. 237. It is not necessary that the affidavit should set forth the crime charged with all legal exactness necessary to be observed in an indictment. If it distinctly charge the commission of an offense, it is all that is necessary: Id. Nor need it state that the prisoner is a fugitive from justice: Id. It has been uniformly held by the courts that the requirements of the law relating to the evidence of the charge shall be strictly complied with, as indispensable to the legality of the demand and resulting obligation of delivery: Spear on Extradition, 268; *Ex parte Thornton*, 9 Tex. 635; *Soloman's Case*, 1 Abb. Pr., N. S., 347.

Application by "fugitive from justice" for release on habeas corpus.—Where the return to a writ of *habeas corpus* sets forth the fact that the party is a fugitive from justice, that he was demanded as such, and was arrested and committed for the purpose of being surrendered, the only inquiry is, whether the provisions of the act of congress of 1793 have been complied with. If it appear that the papers presented to the executive, and upon which the rendition of the person as a fugitive from justice is demanded, are in form and substance sufficient to authorize the issuing of the executive warrant, the prisoner will be remanded: *People* v. *Brady*, 56 N. Y. 182; *State* v. *Schlemn*, 4 Harr. (Del.) 577; *Matter of Manchester*, 5 Cal. 237. On such a return being made, the facts and circumstances of the alleged offense with which the party stands charged cannot be inquired into: *State* v. *Schlemn*, 4 Harr. (Del.) 577; see *Nichols* v. *Cornelius*, 7 Ind. 611; *Matter of Clark*, 9 Wend. 212. Mere formal defects in the indictment will not entitle the prisoner to his discharge: *Davis's Case*, 122 Mass. 324.

Reward cannot be recovered where the plaintiff accomplishes the required act, but without any intention of claiming the reward or any part of it: *Hewitt* v. *Anderson*, 56 Cal. 476.

1548. *Fugitives from another state, when to be delivered up.*

SEC. 1548. A person charged in any state of the United States with treason, felony, or other crime, who flees from justice and is found in this state, must, on demand of the executive authority of the state from which he fled, be delivered up by the governor of this state, to be removed to the state having jurisdiction of the crime.

Interstate extradition: See note to previous section.

Fugitives from justice—Some points of practice: See an article on this subject in 3 Crim. Law Mag. 787.

1549. *Magistrate to issue warrant.*

SEC. 1549. A magistrate may issue a warrant for the apprehension of a person so charged, who flees from justice, and is found in this state.

Arrest of fugitive from justice.—The law of this state authorizing the arrest of a fugitive from justice who has fled from another state before a demand by the executive of the state from which he fled, and his detention for a reasonable time to afford an opportunity for such executive demand, is not in conflict with second section of article 4 of the constitution of the United States: *Ex parte White*, 49 Cal. 433; *Ex parte Cubreth*, Id. 435; *Ex parte Rosenblat*, 51 Id. 285. A person who is thus arrested is entitled to his discharge if his examination is not brought on before the magistrate within six days: *Ex parte Rosenblat*, *supra*.

Warrant for arrest.—Before a magistrate has any authority to issue a warrant for the arrest of a fugitive from justice who has fled from another state, there must be filed in his office a complaint, under oath, setting forth three things: 1. That a crime has been committed; 2. That the accused has been charged in the foreign state with the commission of such crime; 3. That he has fled from justice, and is found within this state: *Matter of Heyward*, 1 Sandf. 701; *Matter of Leland*, 7 Abb. Pr., N. S., 64. The warrant issued for the arrest of such persons is similar in all respects to those issued against persons charged with public offenses committed within the territorial limits of the state. Both, to be valid, should specify the offense alleged to have been committed by the accused; stating that the accused is a fugitive from justice is insufficient: *Ex parte Cubreth*, 49 Cal. 437; see *People* v. *Brady*, 56 N. Y. 182; *Ex parte Pfitzer*, 28 Ind. 450.

1550. *Proceedings for arrest and commitment of person charged.*

SEC. 1550. The proceedings for the arrest and commitment of a person charged are in all respects similar to those provided in this code for the arrest

and commitment of a person charged with a public offense committed in this state, except that an exemplified copy of an indictment found or other judicial proceedings had against him in the state in which he is charged to have committed the offense may be received as evidence before the magistrate.

1551. *When and for what time to be committed.*

SEC. 1551. If, from the examination, it appear that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this state, on the requisition of the executive authority of the state in which he committed the offense, unless he gives bail as provided in the next section, or until he is legally discharged.

1552. *His admission to bail.*

SEC. 1552. The magistrate may admit the person arrested to bail by an undertaking with sufficient securities, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the governor of this state.

1553. *Magistrate must notify district attorney of arrest.*

SEC. 1553. Immediately upon the arrest of the person charged, the magistrate must give notice thereof to the district attorney of the county.

1554. *Duty of the district attorney.*

SEC. 1554. The district attorney must immediately thereafter give notice to the executive authority of the state, or to the prosecuting attorney or presiding judge of the court of the city or county within the state having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

1555. *Person arrested, when to be discharged.*

SEC. 1555. The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the governor of this state.

Executive warrant.—The warrant of the governor issued for the arrest of a fugitive from justice, who has fled from another state, is *prima facie* evidence that all necessary legal requisites have been complied with, and if the previous proceedings are regular, is conclusive evidence of the right to remove the prisoner to the state from which he fled: *Davis's Case*, 122 Mass. 324; *Brown's Case*, 112 Id. 409.

1556. *Magistrate to return his proceedings to superior court.*

SEC. 1556. The magistrate must return his proceedings to the superior court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he is in custody, or the time of his arrest has not elapsed, it may discharge him from detention, or may order his undertaking of bail to be canceled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time specified in the undertaking. [*Amendment, approved April* 12, 1880; *Amendments* 1880, 35 (*Ban. ed.* 202); *took effect immediately.*]

1557. *Fugitives from this state.*

SEC. 1557. When the governor of this state, in the exercise of the authority conferred by section two, article four, of the constitution of the United States, or by the laws of this state, demands from the executive authority of any state of the United States, or of any foreign government, the surrender to the authorities

of this state of a fugitive from justice, who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners, and paid out of the state treasury.

Interstate extradition: See note to section 1547.

1558. *No fee or reward to public officer procuring surrender of fugitives, etc.*

SEC. 1558. No compensation, fee, or reward of any kind can be paid to or received by a public officer of this state, or other person, for a service rendered in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this state, or detaining him therein, except as provided for in such section.

Object of chapter.—"N. Y. Cr. Pr., sec. 907. This chapter is designed to regulate a very important branch of criminal practice. The power to demand a fugitive from justice is one of the most delicate acts of sovereign authority, and should only be exercised in cases where the public welfare demands it. The cases in which its exercise is most frequently called for, though falling within the legal definition of public offenses, are rather of a private than a public character, such as false pretenses, and the like; and it is well known that the executive has always been in the habit of scrutinizing them with great jealousy. And in these cases a large portion, if not a majority, of the applications for the exercise of this high prerogative on the part of the governor are made, not directly by the public authorities, but by the private party on whose complaint the prosecution is instituted. They are informed, moreover, that it has been the practice of those who have filled the executive chair, in some, if not in all, instances of public prosecutions for this offense, to require that the party on whose application the requisition is granted bear the expense of its execution. This practice has no doubt proceeded upon the principle that these prosecutions are so far of a private character as to justify the executive in imposing this condition, with a view to save the public treasury from an unnecessary burden. Whatever may be the reason for it, the commissioners are constrained to believe that it should not exist. Its tendency is to convert the officer with whom the requisition is intrusted rather into a private than a public agent. It has frequently happened that the person to whom the requisition has been delivered has gone with it to a remote state on the strength of its possession, has negotiated for settlement of the debt out of the fraudulent contraction of which it arose, and, holding it as a rod over the party, has wrung from his fears a compromise of the prosecution. Nor is this to be wondered at. Prosecutions of this nature seldom spring from the mere love of justice, but ordinarily are rather prompted by a spirit of revenge, or what is, perhaps, more frequently the case, of cupidity. The officer, therefore, who takes the requisition, at the expense of a private party, will naturally act for the promotion of the interests of his employer rather than from the mere desire to enforce, in his public relation, the process of the law. He will do this, from no motive corrupt in itself, perhaps, but because his own interests are equally involved in the success of a compromise with those of his employer. The commissioners do not propose to restrict, in any degree, the discretion of the executive, or the manner of its exercise, in this or any other criminal case. But, believing as they do that the highest considerations of policy require the exclusion of every motive of private interest in the execution of this more than in that of any other legal process, they propose by this chapter that where a requisition is granted it shall be executed, as it is presumed to be issued, for the public good alone, and that the public treasury shall, therefore, answer for its execution; and that the officer to whom it is intrusted shall be prohibited, under the penalty of a misdemeanor (see sec. 144), from receiving any compensation, fee, or reward for any act or service in respect to it, except as provided for in section 1558:" Code commissioners' note.

CHAPTER V.

MISCELLANEOUS PROVISIONS RESPECTING SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

1562. *Parties to special proceedings, how designated.*

SEC. 1562. The party prosecuting a special proceeding of a criminal nature is designated in this code as the complainant, and the adverse party as the defendant.

1563. *Entitling affidavits.*

SEC. 1563. The provisions of section fourteen hundred and one, in respect to entitling affidavits, are applicable to such proceedings.

1564. *Subpœnas.*

SEC. 1564. The courts and magistrates before whom such proceedings are prosecuted may issue subpœnas for witnesses, and punish their disobedience in the same manner as in a criminal action.

TITLE XIII.

PROCEEDINGS FOR BRINGING PERSONS IMPRISONED IN THE STATE PRISON, OR THE JAIL OF ANOTHER COUNTY, BEFORE A COURT.

1567. *Persons imprisoned in state prison or jail of another county, how brought before court.*

SEC. 1567. When it is necessary to have a person imprisoned in the state prison brought before any court, or a person imprisoned in a county jail brought before a court sitting in another county, an order for that purpose may be made by the court, and executed by the sheriff of the county where it is made.

TITLE XIV.

DISPOSITION OF FINES AND FORFEITURES.

1570. *Fines and forfeitures, how disposed of.*

SEC. 1570. All fines and forfeitures collected in any court, except police courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue must be paid to the county treasurer of the county in which the court is held. [*Amendment, approved March* 30, 1874; *Amendments* 1873–4, 454; *took effect July* 1, 1874.]

The foregoing amendment, and most of the other amendments and new sections to the Penal Code, are taken from "An act to amend the Penal Code," approved March 30, 1874; Amendments 1873–4, 419. The amendatory act contained two other sections, in reference to the effect of the new provisions, as follows:

Repealing clause, etc.

SEC. 88. All provisions of law inconsistent with the provisions of this act are repealed, except as to offenses committed before this act takes effect, and as to such offenses, and for the punishment of parties guilty thereof, the repealed provisions shall continue in force.

SEC. 89. This act shall take effect on the first day of July, one thousand eight hundred and seventy-four.

See section 1457 and construction of these two sections, and of the act of April 1, 1880, in *County of Los Angeles* v. *City of Los Angeles*, 3 West Coast Rep. 441, approved in *Los Angeles* v. *Morgan*, Id. 444.

PART III.

OF THE STATE PRISON AND COUNTY JAILS.

TITLE I.

OF THE STATE PRISON, AND THE DISCHARGE OF PRISONERS THEREFROM BEFORE THEIR TERM OF SERVICE EXPIRES.

CHAPTER I. OF THE STATE PRISON..... 1573
II. OF THE DISCHARGE OF PRISONERS BEFORE THE EXPIRATION OF THEIR TERM OF SERVICE..... 1590

CHAPTER I.

OF THE STATE PRISON.

1573. *Under the charge and control of a board of directors.*

SEC. 1573. The state prison is under the charge, control, and superintendence of a board of directors, consisting of the governor, lieutenant-governor, and secretary of state.

Statutes in regard to state prisons: See *post*, sec. 1595, in note.

1574. *President pro tem. of senate, when to act as director, etc.*

SEC. 1574. In case of a vacancy in the office of lieutenant-governor, the president pro tem. of the senate may perform the duties and receive the compensation provided for the lieutenant-governor.

1575. *Compensation of directors.*

SEC. 1575. The board of directors are to receive the sum of seventy-five dollars per month, each, for expenses incurred by them; in addition to which, the lieutenant-governor is paid the sum of ten dollars per day for each day's services rendered in the performance of any duty at the prison.

1576. *Board must adopt rules and regulations.*

SEC. 1576. The board must adopt rules and regulations for the discipline of prisoners and the government of the prison, which rules must be printed, and copies thereof furnished to every officer appointed by the board.

1577. *Board may appoint warden and other officers.*

SEC. 1577. The board may appoint a warden, clerk, and such other officers as may be necessary for the management and safe-keeping of the prisoners.

1578. *Duties of clerk and other officers.*

SEC. 1578. The clerk must keep a record of the transactions of the board, and he and the warden, and other officers appointed, must perform such other duties as are required by the board or the rules and regulations adopted thereby.

1579. *Monthly reports of officers.*

SEC. 1579. The warden and other officers appointed must make a monthly report to the board, which must contain a statement of business done and transactions had in their several departments.

1580. *Board must keep account of funds received, and report to governor.*

SEC. 1580. The board must keep correct accounts of all funds received from proceeds of convict labor, and appropriate such funds to the maintenance of the convicts and to the payment of prison expenses, and must make a full report to the governor on the first Monday of each August next before the assembling of the legislature, which report must contain a complete statement of the number and condition of the prisoners at the prison; the number and character of officers they have appointed, and the monthly pay received by each; the amount of expenses incurred, and for what; the amount and condition of personal property, belonging to the state, connected with the state prison; and the actual condition of the buildings and property.

1581. *Persons convicted of offenses against United States to be received in prison.*

SEC. 1581. The authorities of the state prison must receive into the prison any person convicted of an offense against the United States, and keep such person in solitary confinement or at hard labor, or in confinement with or without hard labor, as provided in the order of the court pronouncing sentence, until legally discharged, the United States supporting such convict, and paying the expenses of the execution of his sentence.

1582. *Disposition of insane prisoners.*

SEC. 1582. When the physician, warden, and captain of the yard of the prison, after an examination, are of opinion that any prisoner is insane, they must certify the fact under oath to the governor, who may, in his discretion, order the removal of such prisoner to the insane asylum. As soon as the authorities of the asylum ascertain that such person is not insane, they must immediately notify the warden of that fact, and thereupon the warden must cause such prisoner to be at once returned to the prison, if his term of imprisonment has not expired.

1583. *State prison fund.*

SEC. 1583. The moneys appropriated by the legislature and the proceeds of the labor of prisoners constitute the state prison fund.

1584. *State prison fund, how disbursed.*

SEC. 1584. The moneys in the state prison fund are applicable to the payment of the expenses of the prison, and the salaries of the directors and officers thereof. The expenses and salaries must be audited and allowed by a board of examiners of state prison accounts, consisting of the attorney-general, treasurer, and controller; after which, upon the order of the board of directors, the controller must draw his warrant on the treasurer therefor, and the treasurer must pay the same out of such fund.

1585. *Board cannot contract debts.*

SEC. 1585. The board of directors cannot contract any debt or incur any liability binding upon the state.

"The preceding chapter is based upon the following statutes: 1858, p. 259, secs. 4, 5, 9, 10, 11, 12; 1860, p. 341, sec. 1; 1864, p. 24, sec. 1; 1868, p. 141, sec. 1:" Commissioners' note.

An Act appropriating money for building work-shops and prison-buildings at the California state prison, at San Quentin.

[Approved March 31, 1876; 1875–6, 643.]

This act appropriated two hundred thousand dollars for the construction of a large fire-proof work-shop, four hundred feet by sixty feet, and four stories high; also for the purchase of state machinery, shafting, water-pipes, and hose. It provided that bids for sealed proposals to furnish the necessary materials should be published in two daily newspapers in San Francisco for at least ten days. For references to other acts relative to the state prison, see Statutes in Force, tit. "Marin County."

1586. *Compensation of sheriffs for transportation of convicts.*

SEC. 1586. Sheriffs delivering prisoners at the state prisons must receive all expenses necessarily incurred in their transportation, and also a just and reasonable compensation for their own services, the amount of the expenses and compensation in each case to be audited and allowed by the board of examiners, and paid out of any moneys in the state treasury appropriated for that purpose, and no further compensation shall be received by sheriffs for such transportation or services. [*Amendment, approved April* 9, 1880; *Amendments* 1880, 31 (*Ban. ed.* 188); *took effect immediately; repealed all conflicting acts.*]

An Act to allow compensation to sheriffs for conveying prisoners to the state prisons, and insane persons to the insane asylums.

[Approved March 14, 1885; 1885, 126.]

Allowance to sheriff for conveying insane and prisoners.

SECTION 1. There shall be allowed by the state board of examiners to the sheriff, for delivering a prisoner to either of the state prisons, actual expenses and five dollars per diem for the time necessarily consumed in delivering such prisoner.

SEC. 2. There shall be allowed by the state board of examiners to the sheriff, for delivering an insane person to either of the insane asylums, his actual expenses and the same per diem as is allowed in section one of this act.

SEC. 3. This act shall take effect and be in force from and after its passage.

1587. *Contracts for provisions, clothing, etc., to be given at public letting.*

SEC. 1587. The board of directors are hereby authorized and required to contract for provisions, clothing, medicines, forage, fuel, and other supplies for the prison, for any period of time not exceeding one year; and such contract shall be given to the lowest bidder, at a public letting thereof, if the price bid is a fair and reasonable one, and not greater than the usual market value and price. Each bid shall be accompanied by a bond, in such penal sum as said board shall determine, with good and sufficient sureties, conditioned for the faithful performance of the terms of such contract. Notice of the time, place, and conditions of letting of each contract shall be given, for at least four consecutive weeks, in two daily newspapers in the cities of San Francisco and Sacramento; and also four insertions in a weekly paper published in the county in which the prison is situated. If all the bids made at such letting are deemed unreasonably high, the board may, in their discretion, decline to contract, and may again advertise for proposals, and may so continue to renew the advertisement until satisfactory contracts may be had; and in the mean time the board may contract with any one whose offer may be regarded just and proper; but no contract thus made shall be let to run more than sixty days, or shall in any case extend beyond the public letting. No bids shall be accepted, and a contract entered into in pursuance thereof, when such bid is higher than any other bid made at the same letting for the same article, and where a contract can be had at such lower bid. When two or more bids for the same article are equal in amount, the board may select the one which, all things considered, may by them be thought best for the interest of the state, or may divide the contract between the bidders, as in their discretion may seem proper and right; provided, no contract shall be given, or purchase made, where either of the board, or any of the officers of the prison, is interested. All contracts or purchases made in violation of this section shall be void. [*New section, approved February* 24, 1874; *Amendments* 1873–4, 467; *took effect sixtieth day after passage.*]

CHAPTER II.

OF THE DISCHARGE OF PRISONERS BEFORE THE EXPIRATION OF THEIR TERM OF SERVICE.

1590. *Credits for good behavior, how and when allowed.*

SEC. 1590. The board of state prison directors of this state shall require of every able-bodied convict confined in said prison as many hours of faithful labor, in each and every day during his term of imprisonment, as shall be prescribed by the rules and regulations of the prison; and every convict faithfully performing such labor, and being in all respects obedient to the rules and regulations of the prison, or if unable to work, yet faithful and obedient, shall be allowed from his term, instead and in lieu of the commutation heretofore allowed by law, a deduction of two months in each of the first two years, four months in each of the next two years, and five months in each of the remaining years of said term; provided, that any such convict who shall commit an assault upon his keeper, or any foreman, officer, or convict, or otherwise endanger life, or by any flagrant disregard of the rules of the prison, or any misdemeanor whatever, shall forfeit all deductions of time earned by him for good conduct before the commission of such offense; such forfeiture, however, shall only be made by the board of directors, after due proof of the offense, and notice to the offender; nor shall such forfeiture be imposed when a party has violated any rule or rules without violence or evil intent, of which the directors shall be the sole judges. The name of no convict who attempts to escape, after the passage of this act, shall be sent by the state prison officials to the governor for the commutation herein provided; provided further, that of those prisoners entitled to their discharge at the date of the passage of this act, by virtue of the provisions hereof, not more than one shall be discharged on any one day, and the discharges shall be made in the order in which they would have occurred if this act had been passed April, eighteen hundred and sixty-four. [*Amendment, approved March* 29, 1878; *Amendments* 1877-8, 124; *took effect from and after April* 15, 1878.]

1591. *Credits, when forfeited.*

SEC. 1591. The rule of commutation fixed in the preceding section is to be so applied as that any refusal to labor, a breach of the prison rules, or other misconduct, works a forfeiture of the credits of time thus earned, or such part of it as the warden or resident director may determine, subject to confirmation or rejection by the board of directors, on appeal by the prisoner. Unless the board, on appeal, at is first session thereafter, rejects the forfeiture, it is confirmed. Credits once forfeited cannot be restored except by the board, and then only when circumstances render such restoration urgently necessary. The above provisions apply to all persons now imprisoned in the state prison, and the commutation must be computed from April fourth, A. D. eighteen hundred and sixty-four.

1592. *Board to make rules and regulations.*

SEC. 1592. The board may make such rules and regulations as may be necessary to carry into effect the provisions of this chapter, and may declare and establish a proper scale or rate of debits and credits for good conduct or misconduct, which shall accompany the rules of discipline of the prison, and in a book to be kept for that purpose, must cause to be entered up, at the end

of each month, the result of credits to which each prisoner may be entitled, and on the first day of each month announce such result to the prisoners. Every contractor employing convict labor must keep a similar record of the conduct of all prisoners employed by him, and submit the same for inspection to the board at the end of each month, who must take the same into consideration in making up their decision.

1593. *Board when to report credits to governor.*

SEC. 1593. At the end of every month the board must report to the governor of this state the names of all prisoners whose terms of imprisonment are about to expire by reason of the benefits of this chapter, giving in such report the terms of their sentences, the date of imprisonment, the amount of total credits to the date of such report, and the date when their service would expire by limitation of sentence. The governor, at the expiration of the term for which any prisoner has been sentenced, less the number of days allowed and credited to him, must order the release of such prisoner, by an order under his hand addressed to the warden of the prison, in such mode and form as he may deem proper, and with or without restoration to citizenship, according to his discretion.

1594. *Further powers of board.*

SEC. 1594. The board must grant and enter up in favor of such prisoners whom they may deem worthy, by reason of good conduct and industry, during the twelve months prior to the fourth day of April, A. D. eighteen hundred and sixty-four, the credits authorized by section fifteen hundred and ninety, not exceeding thirty days, the same to be deducted from the term of their imprisonment.

1595. *Board must report.*

SEC. 1595. The board must report to the legislature, at each regular session, the names of any persons confined in the state prison who, in their judgment, ought to be pardoned and set at liberty on account of good conduct or unusual terms of sentence, or any other cause which, in their opinion, should entitle such prisoners to a pardon. Whenever the legislature, by a majority of both houses, recommend to the governor that any or all of the persons reported be pardoned by him, he may thereupon pardon such prisoners.

"**This chapter embraces the provisions** of an act to confer further powers upon the governor of this state in relation to the pardon of criminals, approved April 4, 1864, Stats. 1863–4, 356; an act to amend above-cited act, approved March 7, 1868, Stats. 1867–8, 111; an act to amend above-cited act, approved March 30, 1868, Stats. 1867–8, 675; and an act to authorize the board of state prison directors to recommend the pardon of convicts in the state prison, approved March 9, 1868, Stats. 1867–8, 116:" Code commissioners' note.

State prison.—The Political Code, sec. 19, and Penal Code, sec. 23, continued in force all acts in relation to a branch state prison. The main laws upon the subject were an act for the government of the state prison convicts, and to provide for the location of a branch prison, approved April 24, 1858, 259, and an act supplementary to said act of April 24, 1858, approved March 30, 1868; 1867–8, 627. They and other acts relating to the state prison in general will be found collated in the "General Laws," secs. 5651 et seq., and "Supplement," secs. 9175 et seq. All these laws seem to have been superseded by the provisions of the Penal Code in reference to the state prison, sections 1573 et seq., and by the following acts:

An Act to define, regulate, and govern the state prisons of California.

[Approved April 15, 1880; 1880, 67 (Ban. ed. 243).]

State prisons, one at Folsom and one at San Quentin.

SECTION 1. The prison heretofore known as the "branch state prison" shall be known hereafter and designated as the "state prison at Folsom," and all its finances and other accounts shall be kept separate from those of the state prison at San Quentin, and it shall have an official staff conformable to the laws of the state in relation to state prisons; and it shall be lawful for courts to sentence convicts to the state prison at San Quentin, or to the state prison at Folsom,

in their discretion, and the board of directors shall have power to transfer prisoners from either prison to the other one, when, in their judgment, such transfer is for the best interests of the state.

Directors, how appointed—Classification.

SEC. 2. For the government and management of the California state prisons there shall be appointed by the governor, by and with the advice and consent of the senate, on or before the second Monday in January, A. D. eighteen hundred and eighty, five directors, who shall hold their office for the term of ten years from and after said second Monday in January, A. D. eighteen hundred and eighty, and until their successors are appointed and qualified; *provided*, that said directors so appointed shall, at their first meeting after the passage of this act, so classify themselves by lot, that one of them shall go out of office in two years, one of them in four years, one of them in six years, one of them in eight years, and one of them in ten years after said second Monday in January, A. D. eighteen hundred and eighty; and an entry of such classification shall be made in the minutes of said directors, signed by them, and a duplicate thereof shall be filed in the office of the secretary of the state. And on or before the second Monday in January, A. D. eighteen hundred and eighty-two, and at the same time biennially thereafter, the governor shall appoint, by and with the advice and consent of the senate, one director, whose term of office shall be for a period of ten years, commencing with said second Monday in January. And each director shall subscribe an oath of office, which shall be indorsed on his commission.

Election of president.

SEC. 3. At the first meeting of the directors after the passage of this act, and at their meeting in January, biennially thereafter, they shall elect one of their number president of the board.

Quorum.

SEC. 4. A majority of the board shall constitute a quorum for the transaction of business, but no order of the board shall be valid unless it is entered on the journal, and is concurred in by three members.

Duty of directors.

SEC. 5. It shall be the duty of the directors:

1. To determine the necessary officers of the prisons, other than those of wardens and clerks, specifying their duties severally, and fixing their salaries; to prescribe rules and regulations for the government of the prisons, and to revise and change the same from time to time as circumstances may require; *provided*, the warden may make such temporary rules and orders as he may deem proper, to be in force until the next meeting of the board. At least three of said directors shall visit the prison in company on the first Tuesday in each month, or as soon thereafter as may be practicable, and examine all the different departments, and audit all claims against the prisons. The directors shall cause an inspection of the prisons to be made by one of their number at least once in each month.

2. The directors shall meet at the state prisons within the first ten days in January, April, July, and October of each year, and in addition to the duties above described, they shall examine the books and accounts of the wardens and clerks.

3. To enter on their journal the result of all examinations, and of all other official acts, which shall be signed by the members present.

4. On or before the first day of November, A. D. eighteen hundred and eighty, and annually thereafter, to report to the governor the condition of the prisons, together with a detailed statement of their receipts and expenditures, and such suggestions as their interests may require.

Office.

SEC. 6. The board of directors shall have power to establish an office in San Francisco, and employ a secretary.

Appointment of warden.

SEC. 7. The directors shall appoint a warden for each prison, who shall take and subscribe an oath or affirmation faithfully to discharge the duties of his office, and enter into a bond to the state of California in the sum of twenty-five thousand dollars, with two or more sureties, to be approved by the directors and the attorney-general of the state, conditioned for the faithful performance of the duties which may devolve upon him as such officer, and he shall hold his office for four years.

Residence of wardens—Duties.

SEC. 8. The wardens shall reside at the state prisons to which they are respectively assigned, in houses provided and furnished at the expense of the state; and it shall be their duty:

1. To fill all subordinate positions that may be created by order of the board of directors, by appointment of suitable persons thereto;

2. To supervise the government, discipline, and police of the prison;

3. To give all needful directions to the inferior officers, and secure from each a faithful discharge of their several duties;

4. To make frequent examinations into the state of the prisons, the health, condition, and safety of the convicts;

5. To report as often as they may be required to the directors the number of guards employed, their names and duties, and such other matters as may be required;

6. To have general charge of all departments of the prisons, and of the officers;

7. To bring any and all suits at law or in equity arising in his department that may be necessary to protect the rights of the state in matters connected with the prisons and their management, in the name of the board of state prison directors, and to prosecute the same with the consent of the board of directors.

Appointment of clerk.

SEC. 9. The board of directors shall appoint a clerk for each prison, who shall take an oath of office, and enter into a bond to the state, with sureties satisfactory to the board, in the sum of five thousand dollars, that they will faithfully discharge the duties which devolve upon them. The clerks shall hold their office for the period of four years, unless sooner removed by the board for misconduct, incompetency, or neglect of duty.

Duty of clerk.

SEC. 10. The clerks shall keep the accounts of the prisons to which they are severally appointed, in such manner as to exhibit clearly all its financial transactions. A register of convicts shall be kept, in which shall be entered the name of each convict, the crime of which he is convicted, the period of his sentence, from what county, by what court sentenced, his nativity, to what degree educated, at what institution, and under what system; an accurate description of his person, and whether he has been previously confined in a state prison in this or any other state, and if so, when and how he was discharged. The clerks shall also act as secretaries of the board while in session at the prisons.

Contracts—Bids.

SEC. 11. The board of directors are hereby authorized and required to contract for provisions, clothing, medicines, forage, fuel, and all other supplies needed for the support of the prisons, for any period of time not exceeding one year, and such contract shall be limited to *bona fide* dealers in the several classes of articles contracted for. Such contracts shall be given to the lowest bidder at a public letting thereof, if the price bid is a fair and reasonable one, and not greater than the usual market value and prices. Each bid shall be accompanied by such security as the board may require, conditional upon the bidder entering into a contract upon the terms of his bid, on notice of the acceptance thereof, and furnishing a penal bond, with good and sufficient sureties, in such sum as the board may direct, and to their satisfaction, that he will faithfully perform his contract. Notice of the time, place, and conditions of the letting of each contract shall be given for at least two consecutive weeks in two daily newspapers printed and published in the city of San Francisco, and in one newspaper printed and published in the city of Sacramento, and in one newspaper printed and published in the county where the prison to be supplied is situated. If all the bids made at such letting are deemed unreasonably high, the board may, in their discretion, decline to contract, and may again advertise for proposals, and may so continue to renew the advertisement until satisfactory contracts are made; and in the mean time the board may contract with any one whose offer is regarded just and equitable, but no contract thus made shall run more than sixty days, nor in any case extend beyond the public letting. No bid shall be accepted, nor a contract entered into in pursuance thereof, when such bid is higher than any other bid at the same letting for the same class or schedule of articles, and when a contract can be had at such lower bid. When two or more bids for the same article or articles are equal in amount, the board may select the one which, all things considered, may by them be thought best for the interests of the state, or they may divide the contract between the bidders, as in their judgment may seem proper and right. [*Amendment, approved March* 14, 1881; *Statutes and Amendments* 1881, 79; *took effect immediately.*]

Purchase lands for brick-making.

SEC. 12. The board of directors shall have power, in their discretion, to purchase any clay lands suitable for brick-making that may lie contiguous to the San Quentin prison grounds, not to exceed in value the sum of fifteen thousand dollars.

Employees.

SEC. 13. No person shall be appointed to any office, or be employed in the prisons on behalf of the state, who is a contractor, or the agent or employee of a contractor, or who is interested directly or indirectly in any business carried on therein; and no male person who is not a qualified elector of the state of California shall be appointed by the wardens to any office in or about the prisons, nor shall any one be employed or appointed by virtue of this act who is in the habit of intemperate use of intoxicating liquors. A single act of intoxication shall justify discharge or removal.

Removal of directors.

SEC. 14. The governor shall have the power to remove either of the directors for misconduct, incompetency, or neglect of duty, upon proper notice to him or them, accompanied by copies of written charges, he or they having an opportunity to be heard thereon.

Vacancy.

SEC. 15. If the office of director shall become vacant by death, resignation, removal by the governor, or any other cause, the vacancy shall be filled for the unexpired term by the governor, by and with the advice and consent of the senate.

Removal of wardens and clerks.

SEC. 16. The wardens and clerks may be removed by the board of directors at any time for misconduct, incompetency, or neglect of duty; and all other officers and employees may be removed at any time at the pleasure of the warden.

Compensation.

SEC. 17. The directors shall receive no compensation other than ten cents per mile for traveling expenses, and one hundred dollars ($100) per month for other expenses incurred while engaged in the performance of official duties. The warden shall receive a salary of not less than two thousand and four hundred dollars ($2,400), and not to exceed three thousand dollars ($3,000) per annum, in the discretion of the directors. The clerks shall receive one thousand and five hundred dollars ($1,500) per annum, and all other officers and employees shall receive such com-

pensation as the board of directors shall deem just and equitable in each case. [*Amendment, approved March* 14, 1881; *Statutes and Amendments* 1881, 80; *took effect immediately.*]

Money, how drawn.

SEC. 18. All moneys received or collected by the wardens by virtue of this act shall be paid by them into the state treasury to the credit of a fund to be known as the state prison fund, at least as often as once per month, excepting so much thereof as may be necessary to pay the current expenses. The wardens shall require vouchers for all moneys by them expended, and safely keep the same on file in their respective offices at the prisons. For all sums of money required to be paid, other than for the uses above named, as well as for said uses when there is not sufficient money in the hands of the wardens, drafts shall be drawn on the controller of state, signed by at least three of the state prison directors, and countersigned by the warden, and the controller of state shall draw his warrant on the state treasurer, who shall pay the same out of any moneys belonging to the state prison fund, or appropriated for the use or support of the state prisons. [*Amendment, approved March* 14, 1881; *Statutes and Amendments* 1881, 80; *took effect immediately.*]

Revenues paid to warden.

SEC. 19. All revenues of the prisons, unless herein otherwise provided, shall be paid to the wardens, who alone are authorized to receipt for the same and discharge from liability. When any sum of money is paid to the wardens, they shall cause the same to be properly entered on the books by the clerks.

Duty of wardens and state treasurer on payment of money into state treasury.

SEC. 20. On payment of any moneys into the state treasury, as provided in this act, the wardens and state treasurer shall report to the controller of state the amount so paid, and the state treasurer shall give the wardens a receipt therefor, which receipt shall be filed with the controller. The wardens shall report to the controller of state the amount of money paid into the state treasury by them during each month, and shall also report to said controller of state the amounts received and disbursed by them every three months, and during the period for which such report shall be made, which quarterly report shall be signed by the warden and at least three of the directors. [*Amendment, approved March* 14, 1881; *Statutes and Amendments* 1881, 80; *took effect immediately.*]

Employment of convicts.

SEC. 21. All convicts not employed on contracts may be employed by authority of the board of directors, under charge of the wardens and such skilled foremen as he may deem necessary in the performance of work for the state, or in the manufacture of any article or articles which, in the opinion of the board, may inure to the best interests of the state; and the board of directors are hereby authorized to purchase, from time to time, such tools, machinery, and materials, and to direct the employment of such skilled foremen, as may be necessary to carry out the provisions of this section, and to dispose of the articles manufactured and not needed by the state, for cash, at public auction or otherwise. If by auction, after having first given notice of such sale by advertising the time and place thereof, together with a list of the articles to be sold, in ten consecutive issues of two or more daily newspapers of general circulation published in the city and county of San Francisco. The money received from the sale of all articles so sold shall be paid into the state treasury, by the warden of the prison, to the credit of the fund of said prison.

Rules.

SEC. 22. In the treatment of the prisoners the following general rules shall be observed: Each convict shall be provided with a bed of straw, or other suitable material, and sufficient covering of blankets, and shall be supplied with garments of coarse, substantial material, of distinctive manufacture, and with sufficient plain and wholesome food, of such variety as may be most conducive to good health.

2. No punishment shall be inflicted, except by the order and under the direction of the wardens.

3. The warden shall keep a correct account of all the money and valuables upon the prisoner when delivered at the prison, and shall pay the amount, or the proceeds thereof, or return the same, to the convict when discharged, or to his legal representatives in case of his death; and in case of the death of such convict without being released, if no legal representative shall demand such property within five years, the same shall be paid into the state prison fund.

4. The rules and regulations prescribing the duties and obligations of the prisoners shall be printed and hung up in each cell and shop.

5. Each convict, when he leaves the prison, shall be supplied with the money taken from him when he entered, and which he has not disposed of, together with any sum which may have been earned by him for his own account, allowed to him by the state for good conduct or diligent labor, or may have been presented to him from any source; and in case the prisoner has not funds sufficient for present purposes, he shall be furnished with five dollars in money, a suit of clothes costing not more than ten dollars, and a half-fare ticket to the place where sentenced, if the prisoner desires to return there, or to any other place of the same cost; and he shall be entitled, if he so elect, to immunity from having his hair cut, or from being shaved, for three calendar months immediately prior to his discharge. It shall not be lawful for the officers of the prison to furnish, or permit to be furnished, to any one, for publication, the name of any prisoner about to be discharged. When the warden, and such other officers as may be designated by the directors to act with him in such cases, shall be of opinion that any convict is insane, they shall make proper examination, and if they remain of the opinion that such person is insane, the warden shall certify the fact to the superintendent of one of the state asylums for the insane, and shall forthwith send such convict to said asylum for care and treatment. It shall

be the duty of the warden, also, to send to the directors a copy of such certificate, and thereafter a statement as to his subsequent acts regarding the said insane convict. And it shall be the duty of the superintendent of the insane asylum to receive such insane convict and keep him until cured. It shall be his duty, upon the receipt of such insane convict, to notify the directors of the fact, giving name, date, and where from, and from whose hands received. When, in the opinion of the superintendent, such insane convict is cured of insanity, it shall be his duty to immediately notify the directors thereof; and it shall be his duty, also, to notify the warden of the prison from whence he was received, and who shall immediately send for, take, and receive the said convict back into the prison, the time passed at the asylum counting as a part of such convict's sentence. Before discharging any convict who may be insane at the time of the expiration of his sentence, the warden shall first give notice, in writing, to a judge of a superior court of the county in which the state prison may be located, over which he has control, of the fact of such insanity; whereupon said court shall forthwith make an order, and deliver the same to the sheriff of said county, commanding him to remove such insane convict and take him before said court. Upon the receipt of such order, it shall be the duty of said sheriff, to whom it is directed, to execute and return the same forthwith to the court by whom it was issued, and thereupon the said court shall cause proper examination to be made by medical experts, and if it shall satisfactorily appear that such convict is insane, said court shall order him to be confined in one of the insane asylums. The sheriff shall receive the same compensation as for transferring a prisoner to the state prison, and to be paid in the same manner. If any judge, after having been so notified by the warden, shall neglect to cause such order to be made as herein provided, or any such sheriff shall neglect to remove such insane convict, as required by the provisions of this section, it shall be the duty of the warden to cause such insane convict to be removed before a superior court of a county in which the state prison is located, in charge of an officer of the prison or other suitable person, for the purpose of examination; and the cost of such removal shall be paid out of the state treasury, in the same manner as when removed by the sheriff as herein provided.

Labor of convicts—Credits.

SEC. 23. The board of state prison directors of this state shall require of every able-bodied convict confined in a state prison as many hours of faithful labor in each and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the prison; and every convict faithfully performing such labor, and being in all respects obedient to the rules and regulations of the prison, or if unable to work, yet faithful and obedient, shall be allowed from his term, instead and in lieu of the credits heretofore allowed by law, a deduction of two months in each of the first two years, four months in each of the next two years, and five months in each of the remaining years of said term; *provided*, that any such convict who shall commit an assault upon his keeper, or any foreman, officer, or convict, or otherwise endanger life, or by any flagrant disregard of the rules of the prison, or any misdemeanor whatever, shall forfeit all deductions of time earned by him for good conduct before the commission of such offense; such forfeiture, however, shall only be made by the board of directors, after due proof of the offense, and notice to the offender; nor shall such forfeiture be imposed when a party has violated any rule or rules without violence or evil intent, of which the directors shall be the sole judges. The name of no convict who attempts to escape, after the passage of this act, shall be sent by the state prison officials to the governor for the credits herein provided.

United States criminals.

SEC. 24. All criminals sentenced to the state prisons by the authority of the United States shall be received and kept according to the sentence of the court by which they were tried, and the prisoners so confined shall be subject, in all respects, to the same discipline and treatment as though committed under the laws of this state. The wardens are hereby authorized to charge and receive from the United States, for the use of the state, an amount sufficient for the support of each prisoner, the cost of all clothing that may be furnished, and one dollar per month for the use of the prisoner. No other or further charge shall be made by any officer for or on account of such prisoners.

Contract labor.

SEC. 25. After the first day of January, eighteen hundred and eighty-two, the labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation by the state board of prison directors, nor shall they let out any such labor prior to January first, eighteen hundred and eighty two, by contract extending beyond such date; *provided*, that after the passage of this act, no skilled convict labor shall be let or contracted out at a price less than one dollar per day for each convict; *provided further*, that this section shall not apply to contracts heretofore entered into.

Gas and water.

SEC. 26. The board of directors shall have power to contract for the supply of gas and water for said prisons, upon such terms as said board shall deem to be for the best interest of the state, or to manufacture gas, or furnish water, themselves, at their option.

No compensation other than that prescribed by the directors.

SEC. 27. No officer or employee shall receive, directly or indirectly, any compensation for his services other than that prescribed by the directors; nor shall he receive any compensation whatever, directly or indirectly, for any act or service which he may do or perform for or on behalf of any contractor, or agent, or employee of a contractor. For any violation of the provisions of this section, the officer, agent, or employee of the state shall be discharged from his office or service; and every contractor, or employee, or agent of a contractor engaged therein shall be expelled from the prison grounds, and not again permitted within the same as a contractor, agent, or employee.

Not to make presents to convicts without permission.

SEC. 28. No officer or employee of the state, or contractor or employee of a contractor, shall, without permission of the board of directors, make any gift or present to a convict, or receive any from a convict, or have any barter or dealings with a prisoner. For every violation of the provisions of this section the party engaged therein shall incur the same penalty as prescribed in section twenty-seven.

Not to be interested in contracts, etc.

SEC. 29. No officer or employee of the prison shall be interested, directly or indirectly, in any contract or purchase made or authorized to be made by any one for or on behalf of the prisons.

Section 30, relative to transportation of prisoners, was repealed by act approved March 14, 1881, to take effect immediately.

Annual reports.

SEC. 31. There shall be printed annually, for the use of the prisons, five hundred copies of the annual report of the board of directors, and the clerk shall annually transmit to each of the state prisons in the United States one copy of such report.

Bonds.

SEC. 32. All the bonds of officers and employees under this act shall be deposited with the secretary of state.

Shops destroyed by fire may be rebuilt.

SEC. 33. If any of the shops or buildings in which convicts are employed are destroyed in any way, or injured by fire, or otherwise, they may be rebuilt or repaired immediately, under the direction of the board of directors, by and with the advice and consent of the governor, attorney-general, and secretary of state, and the expenses thereof paid out of any fund in the state treasury not otherwise appropriated by law.

Report to governor.

SEC. 34. The board of directors must report to the governor from time to time the names of any and all persons confined in the state prisons who, in their judgment, ought to be pardoned out and set at liberty on account of good conduct, or unusual term of sentences, or any other cause, which, in their opinion, should entitle such prisoner to pardon.

SEC. 35. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 36. This act shall take effect immediately.

An Act to provide for the erection and maintenance of a branch state prison near the town of Folsom.

[Approved March 30, 1874; 1873-4, 785.]

Branch state prison.

SECTION 1. The governor, lieutenant-governor, and secretary of state, the board of state prison directors, are hereby authorized and empowered, and it shall be their duty, to cause to be commenced, on or before the first day of October, A. D. eighteen hundred and seventy-four, the building of a branch state prison, on the land and at the site conveyed to the state by the Natoma Water and Mining Company, situated near the town of Folsom, in Sacramento county; also, to commence building and constructing an exterior wall, inclosing not less than five acres of land, around the same.

Materials and construction.

SEC. 2. The walls of the entire prison structure shall be erected with stone to be taken from the granite quarries situated on the land mentioned in section one of this act, using convict labor in and about the premises whenever it can be done to advantage; and the said prison structure shall be erected, finished, and completed as speedily after it is commenced as practicable; *provided*, that said board of state prison directors shall first order the erection of a suitable structure for the accommodation of not less than one hundred and fifty convicts within the inclosed prison-yard, the same to be in harmony with the general plan adopted for the construction of the branch prison at Folsom.

Plans and specifications.

SEC. 3. The said board of directors shall, on or before the fifteenth day of April, A. D. eighteen hundred and seventy-four, cause to be published in a daily newspaper in the city and county of Sacramento, and city and county of San Francisco, for at least thirty days, a notice to receive plans and specifications, in detail, at a place specified therein, for the construction of a branch state prison, to be erected on the land and at the site hereinbefore mentioned, in said Sacramento county, and upon the basis of accommodating not less than five hundred prisoners at one time. The notice shall also state the premium, not to exceed the sum of five hundred dollars, to be awarded to the architect whose plans and specifications for the same may be adopted.

Proposals, bids, contracts.

SEC. 4. The said board of state prison directors, on or before the fifteenth day of June, A. D. eighteen hundred and seventy-four, shall adopt plans and specifications for said branch state prison, as aforesaid; and on or before the day last before mentioned, shall cause to be advertised in a daily newspaper published in the city and county of Sacramento, and in the city and county of San Francisco, for at least thirty days, a notice to receive sealed proposals and bids to construct and erect any part of said branch state prison, on the land and at the site aforesaid, in accordance with the plans and specifications which shall have been heretofore adopted by said board of state prison directors for the construction of the same, with the reserved right to reject any and all bids as being too high in price, and advertise anew. The said board of directors, on

or before the fifteenth day of September, A. D. eighteen hundred and seventy-four, must let to the lowest responsible bidder the contract to construct and erect such part of said prison structure as the said board of directors, in their direction, may think proper, upon condition that such contractor or contractors execute a good and sufficient bond, in double the amount of his or their bids, to perform such contract of constructing and erecting any part of said prison structure in a skillful and workman-like manner, and in conformity with the plans and specifications aforesaid, which bond shall be approved by the board of state prison directors.

Superintendent.

SEC. 5. The board of state prison directors are hereby authorized to appoint a superintendent of said prison, who shall hold his office during the pleasure of the appointing power, and until his successor is appointed and qualified, whose duty it shall be to superintend and manage the construction and erection of said prison structure, under such rules and regulations as may be prescribed by the board of state prison directors, under the provisions of this act.

Temporary structures.

SEC. 6. The board of state prison directors are hereby authorized to cause to be erected, on said site mentioned in section one of this act, such temporary prison buildings, yard, and officers' quarters as they may deem necessary for the accommodation of the officers and guards, and the safe-keeping of the prisoners during the time they are employed in the erection of the said permanent prison buildings and wall, or prison structure.

Removal of prisoners.

SEC. 7. As soon as temporary quarters and buildings are erected, as provided in section six of this act, the board of state prison directors shall select a number of prisoners, not less than fifty nor more than five hundred, of the number who may be unemployed under contract, and cause them to be removed from the state prison at San Quentin to said prison near Folsom, and there to be confined and worked in the erection of said prison structure, and such other work and labor as the said board of directors shall deem advantageous and proper, during the term or terms of their sentence to the state prison.

Code.

SEC. 8. The provisions of chapters one and two, of Title I., Part III., of the Penal Code, are applicable to and made part hereof, substituting the words "branch state prison" for the words "state prison," whenever occurring in said chapters. The appointment of a prison warden shall be a permanent appointment, and he shall not be removed from office except for good and sufficient cause.

Supply contracts.

SEC. 9. All material necessary to be purchased in the construction of said prison structure, and all supplies for the support and maintenance of said branch state prison, shall be by contract, and the board of directors shall cause to be published, in a newspaper published in the county, a notice to receive bids therefor, and let the same to the lowest responsible bidder, whenever such material or supplies are needed.

Construction accounts, etc.

SEC. 10. All salaries paid to officers, guards, or skilled laborers, and all moneys expended for material, tools, or supplies, used in the construction of said branch state prison buildings and wall, and in the support and maintenance of said prison, shall be drawn from the state treasury, in the same manner as moneys are now drawn therefrom for the support and maintenance of the state prison at San Quentin; and the board of directors shall cause to be kept a correct account, in detail, of all moneys secured and disbursed by them in the building, support, and management of said branch state prison, and shall on or before the first day of November in each year, make a full report to the governor, showing in detail all the transactions connected with the construction, management, support, and maintenance of said prison, and of the working and conducting of the convicts therein confined.

Moneys for work.

SEC. 11. The board of directors shall collect, or cause to be collected, and receive all moneys due for work and labor furnished to any parties at or from said prison, or from the lease of the labor of convicts therein confined, and pay the same into the state treasury, and take the treasurer's receipt therefor; and it shall be the duty of the state treasurer to place the same in a fund, to be known as the "Folsom branch state prison fund," which, together with all moneys appropriated or obtained by the assessment and levy of taxes upon the value of property for the building, support, and maintenance of said prison, shall be subject to orders of said board of directors, to be disbursed in the support of said branch state prison.

Appropriation.

SEC. 12. The sum of one hundred and seventy-five thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the purpose of carrying out the provisions of this act, and the state treasurer is hereby directed and required to place the same in the Folsom branch state prison fund, subject to orders for disbursement as hereinbefore provided. Neither the board of state prison directors mentioned in section one of this act, nor any one acting under or for said board, shall incur or create any debt or debts, liability or liabilities, under the provisions of this act; nor shall they make any contract or agreement in relation to the building and construction of the branch state prison provided for in this act, the completion and fulfillment of which will exceed the appropriation made in this section, or the balance of such appropriation unexpended at the time such contract or agreement is entered into. Any violation of the foregoing provisions shall be a misdemeanor, and all such contracts and agreements shall be void.

SEC. 13. All acts and parts of acts, so far as the same are in conflict with the provisions of this act, are hereby repealed.

SEC. 14. This act shall take effect and be in force from and after its passage and approval.

In addition to the above legislation, the following acts may be referred to:

An act to provide for the completion of the branch state prison at Folsom, approved April 1, 1878; 1877-8, 884.

An act to provide for the speedy completion of the branch state prison at Folsom, approved April 12, 1880; 1880, 39 (Ban. ed. 191).

An act to provide for the erection of a wall at the state prison at Folsom, approved March 13, 1883; 1883, 295.

An act to appropriate the sum of thirty-four thousand four hundred and nineteen dollars and forty cents, to pay the amount found by the sixth judicial court to be due M. Miles and his sureties, for work done under contract, in building the state prison at Folsom, approved March 10, 1885; 1885, 79.

An Act concerning the payment of the expenses and costs of the trial of convicts for crimes committed in the state prison, and to pay the costs of the trial of escaped convicts, and to pay for the expenses of coroner inquests in said prison.

[Approved April 12, 1880; 1880, 43 (Ban. ed. 204).]

Costs and expenses of trials of convicts for crimes committed in state prison.

SECTION 1. The costs and expenses of all trials which have heretofore been had in the county in this state where the state prison is situated, for any crime committed by any convict in the state prison, and the costs of guarding and keeping such convict, and the execution of the sentence of said convict by said county, and the costs and expenses of all trials heretofore had for the escape of any convict from the state prison, and the costs and expenses of all coroner inquests heretofore had of any convict at the state prison, by the county where said prison has been situated, shall be certified to by the county clerk of said county wherein said trials and inquests have been held to the board of state prison directors for their approval, and after such approval they shall pay the same out of the money appropriated for the support of the state prison to the county treasurer of said county where said trials have been had; "*provided*, that this act shall not apply to any costs or expenses incurred since January first, eighteen hundred and seventy-three."

SEC. 2. This act shall only apply to cases which have not been settled for by the state.

SEC. 3. This act shall take effect immediately.

An Act making appropriations for deficiencies for the support of the state prison at San Quentin, prior to the thirty-second fiscal year.

[Approved March 2, 1881; 1881, 14.]

Appropriation.

SECTION 1. The sum of sixty-seven thousand and eighteen and fourteen one hundredths dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated, for the payment of deficiencies for the support of the state prison at San Quentin, prior to the thirty-second fiscal year.

SEC. 2. Any money remaining after the payment of deficiencies mentioned in section one of this act shall be returned to the general fund.

SEC. 3. This act shall take effect immediately.

An Act making appropriations for the purchase of jute, jute machinery, lands, and erection of buildings for the manufacture of jute for the state prison at San Quentin, and other expenses incidental and relating thereto.

[Approved March 4, 1881; 1881, 34.]

Appropriations for state prison at San Quentin.

SECTION 1. The sum of two hundred and nineteen thousand dollars ($219,000) is hereby appropriated out of any money in the state treasury not otherwise appropriated, to be paid to the state board of prison directors, to pay for the purchase of jute, jute machinery, lands, and erection of buildings for the manufacture of jute, and other expenses immediately appertaining to the carrying out of the object of this act, for the state prison at San Quentin.

SEC. 2. The controller of state is hereby authorized and directed to draw his warrant upon the state treasurer in favor of said prison directors for said sum, and the state treasurer is hereby directed to pay the same when presented.

SEC. 3. This act shall take effect immediately.

TITLE II.

OF COUNTY JAILS.

1597. *County jails, by whom kept and for what used.*

SEC. 1597. The common jails in the several counties of the state are kept by the sheriffs of the counties in which they are respectively situated, and are used as follows:

1. For the detention of persons committed in order to secure their attendance as witnesses in criminal cases;

2. For the detention of persons charged with crime and committed for trial;

3. For the confinement of persons committed for contempt, or upon civil process, or by authority of law;

4. For the confinement of persons sentenced to imprisonment therein upon a conviction for crime.

An Act to protect the public health, to prevent the introduction and spreading of disease, and to provide for the protection of the health of criminals under sentence on conviction of a misdemeanor.

[Approved March 13, 1883; 1883, 280.]

Hair-cutting for sanitary purposes.

SECTION 1. Whenever the board of health of any city or county, or city and county, or the board of supervisors of any county, or the county physician of any county of this state, shall present or cause to be presented to the sheriff, or other officer having charge of any county jail or prison in any county or city, or city and county, in this state, a certificate, or order, in writing, to the effect that it is by them, or him, considered necessary for the purpose of protecting the public health, or to prevent the introduction or spreading of disease, or to protect or improve the health of criminals under sentence, that the hair of any criminal or criminals should be cut, the said sheriff, or other officer, shall cut, or cause to be cut, the hair of any such person or persons in his charge convicted of a misdemeanor and sentenced to a longer term of imprisonment than fifteen days, to a uniform length of one and one half inches from the scalp of such person or persons so imprisoned.

SEC. 2. This act shall take effect from and after its passage.

An Act in relation to the house of correction of the city and county of San Francisco.

[Approved April 1, 1878; 1877-8, 953.]

Maintenance of house of correction authorized.

SECTION 1. The board of supervisors of the city and county of San Francisco are hereby authorized to maintain and support in said city and county the institution now existing therein, and known as the house of correction, and to make additions thereto as the same may be required, and also to make all proper rules and regulations for the discipline, management, and employment of persons committed to said house of correction by any court of said city and county.

SEC. 2. In making rules and regulations, as provided in the preceding section, the board of supervisors shall endeavor, as far as possible, to prevent crime, reform prisoners, and make the house of correction self-supporting.

Imprisonment in house.

SEC. 3. All persons appearing for sentence in the police judge's court, the city criminal court, or the municipal criminal court of the city and county of San Francisco, who might be sentenced to imprisonment in the county jail or in the state prison, may, instead thereof, be by the proper court sentenced to imprisonment in the house of correction in said city and county, subject, however, to the provisions of the next section; and no person shall be sentenced to imprisonment in the house of correction except under the provisions of this act.

Term of sentence—Prohibition of certain persons to imprisonment in the house.

SEC. 4. No person shall be sentenced to imprisonment in the house of correction for a shorter or a longer term than that for which he might be sentenced in the county jail or in the state prison, and in no case whatever for a shorter term than three months, nor for a longer term than three years. No person who might be sentenced to imprisonment in the state prison shall be sentenced to imprisonment in the house of correction if he is more than twenty-five years of age, if he has been once before convicted of a felony, or twice before convicted of petit larceny, nor unless, in the opinion of the court, imprisonment in the house of correction will be more for his interest than imprisonment in the state prison, and equally for the interest of the public. The fact of a previous conviction may be found by the court upon evidence introduced at the time of sentence.

Prisoners made to work.

SEC. 5. Persons imprisoned in the house of correction may be put to work on the public works and other property of the city and county of San Francisco, or may be employed at any other work, as the board of supervisors of said city and county may direct. And the said board of supervisors may, so far as a due regard to economy will permit, provide for the learning of trades by persons whose terms of imprisonment in said house of correction are of sufficient length, and who have the capacity requisite therefor, and will work industriously thereat.

Duty of superintendent.

SEC. 6. The superintendent shall give his personal attention to the duties of his office, and shall reside at the house of correction, and the board of supervisors shall provide therein room and board for him, and for the subordinates whose presence may be required in and about said house.

Repeal.

SEC. 7. The third section of an act entitled "An act to utilize the prison labor and govern the house of correction of the city and county of San Francisco," approved March thirty-first, eighteen hundred and seventy-six, and all acts and parts of acts, so far as they are inconsistent with this act, are hereby repealed; *provided*, that all offenses committed before this act takes effect shall be inquired of, prosecuted, and punished in the same manner as if this act had not been passed.

House deemed to be county jail.

SEC. 8. Every person who shall, at the time of the passage of this act, be confined in the house of correction under or by virtue of a sentence of imprisonment in the county jail, may remain in the house of correction till his term of imprisonment shall expire, and, so far as relates to him, the house of correction shall be deemed to be the county jail, and he shall be in the charge and keeping of the superintendent, who shall have the same power over him that the sheriff might exercise if he was in fact in the county jail. While any such person shall be in charge of the superintendent as above provided, the sheriff shall be under no responsibility in regard to him; but nothing herein shall prevent the sheriff from removing at any time any such person from the house of correction to the county jail. Nothing in this act shall be construed to abolish or in any way to interfere with the government or control of the county or branch county jails of said city and county by the sheriff of said city and county.

SEC. 9. This act shall take effect in thirty days from and after its passage.

An Act to provide for the commitment of persons convicted of crime to the house of correction.

[Approved March 9, 1885; 1885, 34.]

SECTION 1. Any court or judicial officer authorized by law to commit persons to the county jail in any county, or city and county, of this state, wherein there is situated a house of correction, may commit to said house of correction, instead of to the county jail, any person convicted of crime, the punishment for which now is imprisonment in the said jail; but no person shall be sentenced to imprisonment therein for a shorter or longer term than that for which he might be sentenced in the county jail.

SEC. 2. This act shall take effect immediately.

1598. *Rooms required in county jails.*

SEC. 1598. Each county jail must contain a sufficient number of rooms to allow all persons belonging to either one of the following classes to be confined separately and distinctly from persons belonging to either of the other classes:

1. Persons committed on criminal process and detained for trial;
2. Persons already convicted of crime and held under sentence;
3. Persons detained as witnesses, or held under civil process, or under an order imposing punishment for a contempt;
4. Males separately from females.

1599. *Prisoners to be classified.*

SEC. 1599. Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process, must not be kept or put in the same room, nor shall male and female prisoners (except husband and wife) be kept or put in the same room.

1600. *Prisoners committed must be actually confined.*

SEC. 1600. A prisoner committed to the county jail for trial, or for examination, or upon conviction for a public offense, must be actually confined in the jail until he is legally discharged; and if he is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape.

1601. *Sheriff to receive prisoners committed by United States courts.*

SEC. 1601. The sheriff must receive, and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States, until he is discharged according to law, as if he had been committed under process issued under the authority of this state; provision being made by the United States for the support of such prisoner.

1602. *Sheriff or jailer answerable for safe-keeping of such prisoners.*

SEC. 1602. A sheriff to whose custody a prisoner is committed, as provided in the last section, is answerable for his safe-keeping, in the courts of the United States, according to the laws thereof.

1603. *When jail of a contiguous county may be used.*

SEC. 1603. When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the county judge may, by a

written appointment, filed with the county clerk, designate the jail of a contiguous county for the confinement of the prisoners of his county, or of any of them, and may at any time modify or annul the appointment.

1604. *Keeper of jail in contiguous county to receive prisoners.*

SEC. 1604. A copy of the appointment, certified by the county clerk, must be served on the sheriff or keeper of the jail designated, who must receive into his jail all prisoners authorized to be confined therein, pursuant to the last section, and who is responsible for the safe-keeping of the prisoners so committed, in the same manner and to the same extent as if he was sheriff of the county for whose use his jail is designated, and with respect to the persons so committed, he is deemed the sheriff of the county from which they were removed.

1605. *When jail in contiguous county to cease to be used.*

SEC. 1605. When a jail is erected in the county for the use of which the designation was made, or its jail is rendered fit and safe for the confinement of prisoners, the county judge of that county must, by a written revocation, filed with the county clerk thereof, declare that the necessity for the designation has ceased, and that it is revoked.

1606. *Prisoners to be returned to proper county.*

SEC. 1606. The county clerk must immediately serve a copy of the revocation upon the sheriff of the county, who must thereupon remove the prisoners to the jail of the county from which the removal was had.

1607. *Prisoners may be removed in case of fire.*

SEC. 1607. When a county jail or a building contiguous to it is on fire, and there is reason to apprehend that the prisoners may be injured or endangered, the sheriff or jailer must remove them to a safe and convenient place, and there confine them as long as it may be necessary to avoid the danger.

1608. *Prisoners may be removed in case of pestilence.*

SEC. 1608. When a pestilence or contagious disease breaks out in or near a jail, and the physician thereof certifies that it is liable to endanger the health of the prisoners, the county judge may, by a written appointment, designate a safe and convenient place in the county, or the jail in a contingent county, as the place of their confinement. The appointment must be filed in the office of the county clerk, and authorize the sheriff to remove the prisoners to the place or jail designated, and there confine them until they can be safely returned to the jail from which they were taken.

1609. *Papers served on jailer for prisoner.*

SEC. 1609. A sheriff or jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served, must forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so he is liable to the prisoner for all damages occasioned thereby.

1610. *Guard for jail.*

SEC. 1610. The sheriff, when necessary, may, with the assent in writing of the county judge, or in a city, of the mayor thereof, employ a temporary guard for the protection of the county jail, or for the safe-keeping of prisoners, the expenses of which are a county charge.

Guard of jail—Claim for services.—A person who is employed on three several occasions as a temporary guard of the county jail has three separate and distinct causes of action for the recovery of his salary, and a judgment obtained on one is no bar to a recovery on the others: *Hughes* v. *Mendocino Co.*, 3 West Coast Rep. 201.

1611. *Sheriff to receive all persons duly committed.*

SEC. 1611. The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing, and bedding, for which he shall be allowed a reasonable compensation, to be determined by the board of supervisors, and, except as provided in the next section, to be paid out of the county treasury.

1612. *Prisoners on civil process, when not to be received.*

SEC. 1612. Whenever a person is committed upon process in a civil action or proceeding, except when the people of this state are a party thereto, the sheriff is not bound to receive such person, unless security is given on the part of the party at whose instance the process is issued, by a deposit of money, to meet the expenses for him of necessary food, clothing, and bedding, or to detain such person any longer than these expenses are provided for. This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court.

1613. *Prisoners may be required to labor.*

SEC. 1613. Persons confined in the county jail under a judgment of imprisonment rendered in a criminal action or proceeding, may be required by an order of the board of supervisors to perform labor on the public works or ways in the county.

1614. *Rules and regulations for performance of labor.*

SEC. 1614. The board of supervisors making such order may prescribe and enforce the rules and regulations under which such labor is to be performed.

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STATUTES IN FORCE.

BEING

THE STATUTES NOW IN FORCE IN CALIFORNIA WHICH HAVE NOT BEEN PRINTED ELSEWHERE IN THE CODES, TOGETHER WITH REFERENCES TO SPECIAL AND LOCAL ACTS AFFECTING THE VARIOUS COUNTIES.

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STATUTES IN FORCE.

The statutes in force consist of such as were expressly continued in force by the codes, such as related to subjects not embraced in the codes, and such as have been passed since the adoption of the codes. In some, and indeed in many cases, owing to the incomplete manner in which the work of repeal and supersession has been done, it is difficult to determine what is in force and what has been superseded; and in most of these cases no certainty will be arrived at until further action by the legislature or final adjudication in respect to them by the supreme court. The volume of "statutes continued in force" published by the code commissioners, though purporting on its title-page to have been published by authority, is not authority in the sense of having received the legislative sanction: *Needham* v. *Thresher*, 49 Cal. 392. The following pages contain all the general statutes expressly continued in force by the codes, and all others that seem to have been unaffected by the codes and to be still in force, except those that are distributed throughout the codes under sections appropriate to the subject-matter of the statutes. As to the statutes passed since the adoption of the codes, those altering or affecting any of their provisions, or relating to the same subject-matters, have been inserted in proper places therein; so as to keep together, as far as possible, all provisions of law upon the same subject, and exhibit on the same page any changes or modifications which may have been made. Where new statutes relate to matters not embraced in the codes they have been kept separate, and will be found below.

In regard to the special and local legislation, with which the volumes of our session laws are mostly filled, some of the most important statutes are given below; and others, where too long or too numerous for insertion, are referred to under the proper heads, such as those relating to "Fees," "Roads," etc. But in addition to such references, all the special and local legislation will be found fully referred to under the heads of the respective counties. When it is considered how greatly the legislation upon the same subject varies for different counties, it will readily be understood that a complete reprint of all such laws would be altogether impracticable. When it is further considered that by reason of such special and local acts the general laws are more or less affected in the different counties, it will also be understood that complete references to such laws must be found valuable. For this reason, the plan, first adopted in "Hittell's General Laws," of giving lists of all the special and local legislation under the heads of the counties respectively has been continued in this work. It may be here added, what however has probably already struck the reader of the above remarks, that our system of statute law is, in many respects, very far yet from being reduced to anything like uniformity or proper order.

ADULT BLIND.

See Home of Adult Blind.

AGED PERSONS.

See Home of Adult Blind; Veterans' Home Association.

An Act to appropriate money for the support of aged persons in indigent circumstances.

[Approved March 15, 1883; 1883, 380.]

Per capita amount.

Section 1. There is hereby appropriated, out of any money in the state treasury not otherwise appropriated, to each and every institution in this state conducted for the support and maintenance of aged persons in indigent circumstances, and either solely for that purpose or in connection with the support

and maintenance of minor orphans, half-orphans, and abandoned children, aid as follows: For each aged person in indigent circumstances supported and maintained in any such institution, the sum of one hundred dollars per annum.

Date.

SEC. 2. The aid hereby granted shall commence on the first Monday in July, eighteen hundred and eighty-three, and shall be paid in semi-annual installments, commencing on the first Monday in January, eighteen hundred and eighty-four.

Record-book.

SEC. 3. 1. It shall be the duty of every institution entitled to aid under this act to keep a book in which shall be entered the date of admission, name, age, sex, and place of birth of each and every aged person in indigent circumstances, who is or hereafter may be received or admitted in such institution, and the date of discharge of such person, when such discharge is made, the property or estate, if any, owned by such person, and the insurance, if any, on his or her life, whether married or single; if married and a female, the name and residence of the husband, if living, when they came to California, and habits of sobriety.

2. Every such institution shall also keep a book entitled "Monthly Accounts," in which shall be entered on the debtor side all moneys received from any and all sources for or on behalf of such aged indigent persons, with the date of such receipt segregated under the proper heads. On the credit side shall be entered all disbursements made on account of such aged indigent persons; specifying for what purpose made, and the amounts entered in detail so disbursed, segregated under their proper heads.

3. A pay-roll shall also be kept of the employees, and the amounts disbursed to each.

4. A transcript of such books and pay-roll, verified under oath by the manager or persons in charge of such institution entitled to or claiming state aid under this act, shall be made and forwarded to the state board of examiners at the time of making demand or presenting claim for state aid, covering the time for which such claim for state aid is made, and a list of all the inmates (other than the employees or officers, minor orphans, half-orphans, and abandoned children) supported wholly or in part by any institution claiming state aid under this act, shall be forwarded with such claim for aid; provided, always, that when such institution claiming state aid under this act shall support and maintain minor orphans, half-orphans, and abandoned children, and claim state aid for them under the act approved twenty-fifth March, eighteen hundred and eighty, entitled "An act to appropriate money for the support of orphans, half-orphans, and abandoned children," the same book of monthly accounts required by said named act may contain the accounts required to be kept by this act, and that one transcript and pay-roll and claim for aid, embracing the requirements of the act above referred to as to orphans, half-orphans, and minor children, and the requirements of this act as to aged and indigent persons, may be made and furnished to the state board of examiners.

5. Said books shall be open at all times to the inspection of the state board of examiners, or by any person authorized by them to examine the same, or by any committee of the legislature, or clerk thereof, duly authorized so to do.

SEC. 4. The state board of examiners are authorized, on behalf of the state, at any time to inquire, either in person or by authorized agent, into the man-

agement of any such institution, and any such institution refusing, upon due demand, to permit such inquiry shall not thereafter receive any aid under this act. All expenses incurred in visiting such institutions shall be audited and allowed by the state board of examiners out of the appropriations for the support of aged persons in indigent circumstances, under this act.

Presentation of claims.

SEC. 5. Every claim for aid under this act shall be presented to and audited and allowed by the state board of examiners. Such claim shall contain:

1. The name and location of the institution making the claim;
2. The name of the person having control thereof;
3. The number of aged persons in indigent circumstances therein;
4. The date of admission, and age of each;
5. The amount, if any, that the institution is receiving for the specific support of any such aged indigent person. Such claim, and the statements therein contained, shall be verified by the oath of the person or persons, or some of them, in charge of such institution, and the board of examiners may, in their discretion, require the production of the books of such institution in support of such claim.

Warrants.

SEC. 6. If such claim be audited and allowed in whole or in part, it shall be the duty of the controller to draw his warrant for the amount thereof in favor of such institution, if a corporation, or if not, of the person or persons in charge thereof, and it shall be the duty of the treasurer to pay the same on presentation.

SEC. 7. In order that the provisions of this act shall not be abused, it is hereby declared:

1. That no institution which has less than ten aged indigent persons shall be deemed entitled to aid under this act.
2. That no person under the age of sixty years shall be deemed an aged person in indigent circumstances within the meaning of this act.
3. That no person for whose specific support there is paid to any such institution the sum of fifteen dollars or more per month shall be entitled to aid under this act.
4. No institution not under the exclusive control of the state shall receive any aid under the provisions of this act, unless such institution shall own in its corporate name real property devoted to the support and maintenance of aged persons in indigent circumstances, either solely or in connection with orphans, half-orphans, and abandoned children, of the value of not less than fifteen thousand dollars.

SEC. 8. That no money appropriated by the state under this act shall be expended either in improvements or in the erection of new buildings by such institution.

AGRICULTURE.

See FRUIT-TREES AND VINES; HORTICULTURE; SILK CULTURE; VITICULTURE.

California State Agricultural Society.— The following acts are referred to and virtually continued in force by the Political Code, secs. 705, 2326.

An Act to incorporate the state agricultural society, and to appropriate money for its support.

[Passed May 13, 1854, 163.]

Incorporation and powers.

SECTION 1. There is hereby established and incorporated a society to be known and designated by the name and style of the California State Agricul-

tural Society, and by that name and style shall have perpetual succession, and shall have power to contract and be contracted with, to sue and be sued, and shall have authority to have and use a common seal, to make, ordain, and establish, and put in execution, such by-laws, ordinances, rules, and regulations as shall be necessary for the good government of said society, and the prudent and efficient management of its affairs; provided, that said by-laws, ordinances, rules, and regulations shall not be contrary to any provision of this charter, nor the laws and constitution of this state or of the United States.

SEC. 2. In addition to the powers above enumerated, the society shall, by its name aforesaid, have power to purchase and hold any quantity of land not exceeding two sections, and may sell and dispose of the same at pleasure; the said real estate shall be held by said society for the purpose of establishing a model experimental farm or farms, erecting inclosures, buildings, and other improvements calculated and designed for the meeting of the society, and for an exhibition of the various breeds of horses, cattle, mules, and other stock, and of agricultural, mechanical, and domestic manufactures and productions, and for no other purpose. And it is further enacted, that if from any cause said society shall ever be dissolved, or fail to meet within the period of two consecutive years, then the real estate held by it, together with all the buildings and appurtenances belonging to said estate, shall be sold as lands are now sold, by execution, and the proceeds deposited in the state treasury, subject to the control of the legislature.

Sections 3, 4, 6, 7, 9, and 10 were repealed by act of March 20, 1858, 80.

Sections 5 and 11 provided for the first meeting of the society, named the first officers, and provided for filling vacancies in case of failure or inability to serve.

Section 8 appropriated five thousand dollars annually for four years for the purpose of paying premiums. It was amended by act of March 20, 1858, 80, which appropriated five thousand dollars annually for five years from and after May 13, 1858, for the same purpose. Both required certain duties of the recording secretary in regard to statements of accounts.

An Act supplemental to foregoing act of May 13, 1854, *and amendatory act of March* 20, 1858.

[Approved March 12, 1863, 49.]

Board of agriculture.

SECTION 1. The general prudential and financial affairs of the society shall be intrusted to a board of agriculture, to consist of a president and nine directors, five of whom shall constitute a quorum.

Election.

SEC. 2. Said board of agriculture shall be elected at a general state agricultural convention, to be held at the capital of the state, in the year one thousand eight hundred and sixty-three, in the month of March, and in the month of January every year thereafter, to consist of the life members and annual members of the state agricultural society, and four delegates from each county agricultural society within this state, incorporated under the general laws of this state for such corporations, and an equal number from each district agricultural society, also incorporated under the general laws of this state for such purposes; said delegates to be chosen at the annual fair or annual meeting of each such society next preceding the state agricultural convention; provided, said convention to be held in March, in the year one thousand eight hundred and sixty-three, may admit any person or persons representing any of said county or district agricultural societies as the convention may determine by a majority vote, whether such persons shall have been elected by their respective

county or district agricultural societies, as provided in this act, or not. [*Amendment, approved March* 12, 1863, 50; *took effect on passage.*]

Term of office.

SEC. 3. The board of agriculture shall, at its first meeting after its election, be divided by lot into three equal portions (omitting the president), one portion to continue in office one year, one portion two years, and one portion three years; one third of the number, together with a president, to be elected at the state agricultural convention annually thereafter; the directors to hold office three years.

Officers of board.

SEC. 4. The board of agriculture may in the absence of the president choose one of its other members temporary chairman. They shall elect a treasurer and secretary, not members of the board, prescribe their duties, fix their pay, and the said treasurer and secretary shall be subject to removal at any time by a majority of said board.

Duties—Annual exhibition—Report.

SEC. 5. The board of agriculture shall use all suitable means to collect and diffuse all classes of information calculated to aid in the development of the agricultural, stock-raising, mineral, mechanical, and manufacturing resources of the state; shall hold an annual exhibition of the industry and products of the state, and on or before the first day of January of each year in which the legislature shall be in regular session they shall furnish to the governor a full and detailed account of all its transactions, including all the facts elicited, statistics collected, and information gained on the subject for which it exists; and also a distinct financial account of all funds received, from whatever source, and of every expenditure for whatever purpose, together with such suggestions as experience and good policy shall dictate for the advancement of the best interests of the state; the said reports to be treated as other state documents are.

Marshals.

SEC. 6. The board of agriculture shall have power to appoint a suitable number of persons to act as marshals, who shall be, from twelve o'clock, noon, of the day previous to the opening of the exhibition, until noon of the day after the close of the same, vested with all the powers and prerogatives with which constables are invested, so far as acts or offenses committed within, or with reference to, or in connection with, the exhibition, are concerned.

Premiums.

SEC. 7. The board of agriculture may, in its discretion, award premiums for the best cultivated farms, orchards, vineyards, gardens, et cetera; provided, that said board shall not audit, allow, or pay an amount exceeding one thousand dollars, in any one year, for traveling expenses of visiting committees in examining said farms, et cetera; provided further, that no person except practical agriculturists shall be appointed on said committees.

SEC. 8. It shall be optional with any person to whom a premium is awarded to receive the article named or its equivalent (as affixed) in coin.

SEC. 9. The state agricultural society shall have power, at its first annual meeting after the passage of this act, to make such alterations in its constitution as shall make it conform to the provisions of this act.

SEC. 10. All acts or provisions in conflict with the provisions of this act are hereby repealed.

SEC. 11. This act shall be in effect from and after its passage.

An Act supplemental to foregoing act of March 12, 1863.

[Approved April 13, 1863, 259.]

Auditing of claims—Warrants—Presentation.

SECTION 1. The board of directors mentioned in section one of the act to which this act is supplemental shall audit all claims or demands against the state agricultural society that have accrued prior to the first day of January, eighteen hundred and sixty-three, and allow such as may be just and proper, and cause their warrants to be drawn on the treasurer of said society, payable out of the general fund; said warrants shall be signed by the president and secretary of said board of directors, and the treasurer shall pay the same in the order of their presentation, if there be money in said fund; but if not, then he shall indorse on the back of the warrant: Presented, and not paid for want of funds, this —— day of ——, Anno Domini eighteen hundred and sixty ——; and said warrants shall draw interest at the rate of ten per cent per annum, from the date of presentation until paid.

General fund—Special fund.

SEC. 2. All assets, moneys, and debts due said society, that accrued prior to the first day of January, eighteen hundred and sixty-three, shall be placed to the credit of the general fund, for the liquidation of the debts of said society created prior to the first day of January, eighteen hundred and sixty-three; and all moneys received during each fiscal year hereafter shall be placed to the credit of a fund to be known as a special fund for the payment of the current expenses, premiums, and awards for the year in which the same was received, and to liquidate the outstanding indebtedness of said society, as hereinafter provided; and all moneys received from appropriations, donations, or from any other source, and all property acquired, shall be exempt from attachment and execution for any debt or liability other than those created during that fiscal year.

Payment of claims—Surrender of warrants—Acceptance of bids.

SEC. 3. The directors shall, each year, pay all claims or demands, and premiums awarded, before the last day of December, from said special fund; and if any money remains in said special fund after the liquidation of all claims and demands of that fiscal year, then the directors shall advertise in some newspaper published in Sacramento that they will receive proposals for the surrendering of the outstanding warrants against the general fund, naming the time and place when they will be received and opened. Said board shall accept the bids that will surrender said warrants for the lowest per cent until all the money remaining in said fund is expended; and the board may accept a bid for a part of any warrant, and issue a new warrant for the balance due on such warrant; provided, said directors shall not receive any bid above par, or for any claims or demand that is not presented, allowed, and a warrant drawn as provided in section one of this act, within ninety days from the passage of this act.

Board to audit claims and approve premiums.

SEC. 4. No debt or demand of any kind against said society shall be paid by the treasurer or any other person until it shall have first been audited by the board of directors, and on a warrant drawn upon the treasurer, signed by the president and secretary; and no premiums that may have been awarded by any committee shall be paid until it has been approved by the board of directors.

SEC. 5. This act shall take effect and be in force from and after its passage.

An Act for the encouragement of agriculture and other industries.

[Approved March 21, 1872; 1871-2, 442.]

Appropriations.

SECTION 1. There is hereby appropriated out of any money in the treasury not otherwise appropriated the sum of five thousand dollars for the state agricultural society, the sum of three thousand dollars for the Bay District Agricultural Society, the sum of two thousand dollars for each of the following-named societies, viz.: the Los Angeles District Agricultural Association, the Santa Clara Valley Agricultural Society, the Sonoma and Marin District Agricultural Society, the San Joaquin Valley District Agricultural Society, the Northern District Agricultural, Horticultural, and Mechanical Society, the Upper Sacramento Agricultural Society, the Siskiyou County Agricultural Society, and the Bay District Horticultural Society, and the California Vine-growers and Wine and Brandy Manufacturers' Association, for each of the years eighteen hundred and seventy-two and eighteen hundred and seventy-three. Upon presentation of the requisition of the president and secretary of either of the societies above named to the state controller, the controller shall draw his warrant on the treasurer in favor of such society for the amount appropriated to such society, and the treasurer shall pay the same. The money so drawn by each society shall be used for the purpose of paying premiums for the various agricultural, mineral, mechanical, and manufacturing products of this state, and for no other purpose.

Reports.

SEC. 2. The directors of each of the above-named societies, except the state agricultural society, shall each year report to the state board of agriculture the name and post-office address of each of the officers of such society on or before the first day of May; and on or before the first day of December of each year they shall report to said board of agriculture the transactions of said society, including the list of articles exhibited and premiums awarded, the amount of receipts and expenditures of the year, and the objects for which the expenditures have been made, the new industries inaugurated, and new products produced, and any and all other facts showing the development of the resources of the district embraced in such society which they may deem worthy of such report.

Report of state board of agriculture.

SEC. 3. The state board of agriculture shall report annually, on or before the fifteenth day of January, to the governor of the state, the full transactions of the state society, including the facts and statistics collected and information gained on the subjects for which it exists; also including the reports from each of the above-named societies, or so much thereof as said board may deem of value for publication.

Printing and distribution of reports.

SEC. 4. The governor shall cause five thousand volumes of said report of the state board of agriculture to be printed each year, at the expense of the state, and paid for as other public printing, and delivered to the state agricultural society for general distribution.

SEC. 5. All laws or parts of laws conflicting with the provisions of this act are hereby repealed.

SEC. 6. This act shall take effect and be in force after its passage.

An Act to provide for the management and control of the state agricultural society by the state.

[Approved April 15, 1880; 1880, 49 (Ban. ed. 212).]

State institution.

SECTION 1. The state agricultural society is hereby declared to be a state institution.

Board, how appointed—Vacancies.

SEC. 2. Within ten days after the passage of this act the governor shall appoint twelve resident citizens of the state, who shall, when organized, constitute a state board of agriculture, who shall, except as hereinafter provided, hold office for the term of four years, and until their successors are appointed and qualified. Vacancies occurring from any cause in the board shall be filled by appointment of the governor for the unexpired term of the office vacated.

Organization—Officers.

SEC. 3. Within ten days after their appointment the persons so appointed shall qualify, as required by the constitution, and shall meet at the office of the state agricultural society and organize by the election of one of their number as president of the board and said society, who shall hold said office of president for the term of one year, and until his successor is elected and qualified. The board shall also elect a secretary and treasurer, not of their number, who shall each hold office at the discretion of the board.

Terms.

SEC. 4. At the same meeting the members of the board shall, by lot or otherwise, classify themselves into four classes of three members each. The terms of office of the first class shall expire at the end of the first fiscal year; of the second class, of the second year; of the third class, of the third year; of the fourth class, at the end of the full term of four years. The fiscal year shall be from the first of February to the first of February.

Powers and duties.

SEC. 5. The state board of agriculture shall be charged with the exclusive management and control of the state agricultural society as a state institution; shall have possession and care of its property, and be intrusted with the direction of its entire business and financial affairs. They shall define the duties of the secretary and treasurer, fix their bonds and compensation, and shall have power to make all necessary changes in the constitution and rules of the society; to adapt the same to the provisions of this act, and to the management of the society, its meetings, and exhibitions. They shall provide for an annual fair or exhibition by the society of all the industries and industrial products of the state, at the city of Sacramento; provided, that in no event shall the state be liable for any premium awarded or debt created by said board of agriculture.

Same.

SEC. 6. The board shall have power to appoint all necessary marshals and police to keep order and preserve peace at the annual fairs of the society, and the officers so appointed shall be vested with the same authority for the preservation of order and peace, on the grounds and in the buildings of the society, that executive peace-officers are vested with by law.

Report to governor.

SEC. 7. Said board shall use all suitable means to collect and disseminate all kinds of information calculated to educate and benefit the industrial classes, develop the resources, and advance the material interests of the state, and

shall, on or before the first day of February of each year, report to the governor a full and detailed account of their transactions, statistics, and information gained, and also a full financial statement of all funds received and disbursed. They shall also make such suggestions and recommendations as experience and good policy may dictate for the improvement and advancement of the agricultural and kindred industries.

Printing reports.

SEC. 8. The superintendent of state printing shall each year print and bind in cloth four thousand volumes of said transactions, and deliver the same to said board of agriculture for distribution and exchange. He shall also do such job printing as said board may require to carry out the provisions of this act.

County and district agricultural societies.

SEC. 9. The directors or boards of managers of each county and district agricultural society or association, and of each county, district, or state horticultural and stock-breeding association or society, organized and acting under the laws of this state, shall report annually, on or before the first day of April, to the state board of agriculture, the name and post-office address of each officer of such society or association; and on or before the first day of December shall report to said board of agriculture the transactions of said society, including the premiums offered, the list of stock and articles exhibited, and the premiums paid; the amount of receipts and expenditures for the year, the new industries inaugurated, and any and all facts and statistics showing the development and extent of the industries, products, and resources of the county or district embraced within the management of such society or association; provided, that the provisions of this act shall not apply to any board of commissioners or other body organized under the laws of this state, the object of which is to promote vinicultural industries, unless such board or body shall voluntarily request the privilege of making such reports as are called for by this act, in which case such board or body shall enjoy equal privileges as are accorded to other institutions devoted to agriculture.

To furnish blanks, etc.

SEC. 10. To facilitate such reports, the state board of agriculture shall have prepared, and shall furnish such societies with necessary schedules and blanks for such reports, and said state board shall include such reports from societies and associations, or so much thereof as they may deem advisable, in their report to the governor.

To notify governor of organization and report vacancies.

SEC. 11. When said state board of agriculture shall have been organized and classified as provided herein, the secretary of the board shall report such organization and classification to the governor. He shall also report any vacancy that may occur in said board at any time.

SEC. 12. All laws and parts of laws in conflict with this act are hereby repealed.

SEC. 13. This act shall take effect and be in force from and after its passage.

An Act to form agricultural districts, to provide for the organization of agricultural associations therein, and for the management and control of the same by the state.

[Approved April 15, 1880; 1880, 62 (Ban. ed. 238).]

Districts.

SECTION 1. The counties of Alameda, Contra Costa, and San Francisco shall constitute agricultural district number one.

SEC. 2. The counties of San Joaquin, Calaveras, Fresno, Kern, Merced, Mariposa, Stanislaus, Tulare, and Tuolumne shall constitute agricultural district number two.

SEC. 3. The counties of Butte, Colusa, and Tehama shall constitute agricultural district number three.

SEC. 4. The counties of Sonoma, Marin, Solano, and Napa shall constitute agricultural district number four.

SEC. 5. The counties of Santa Clara and San Mateo shall constitute agricultural district number five.

SEC. 6. The counties of Los Angeles, San Diego, San Bernardino, Santa Barbara, Ventura, and Inyo shall constitute agricultural district number six.

SEC. 7. The counties of Monterey, Santa Cruz, San Luis Obispo, and San Benito shall constitute agricultural district number seven.

SEC. 8. The counties of Nevada and Placer shall constitute agricultural district number seventeen; and the counties of Alpine, Amador, El Dorado, and Mono shall constitute agricultural district number eight. And the sum of three thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated, for the aid of district agricultural society number seventeen, to be audited and paid the same as appropriations for other district agricultural societies.

SEC. 9. The counties of Humboldt and Del Norte shall constitute agricultural district number nine.

SEC. 10. The counties of Siskiyou, Trinity, and Shasta shall constitute agricultural district number ten.

SEC. 11. The counties of Plumas, Lassen, Modoc, and Sierra shall constitute agricultural district number eleven. The counties of Mendocino and Lake shall constitute agricultural district number twelve; and the counties of Sacramento, Yolo, Yuba, and Sutter shall constitute agricultural district number thirteen.

Who may form—Title and powers.

SEC. 12. Any fifty or more persons representing a majority of the counties within any of the districts above constituted may form an association for the improvement of the material industries within such district, and when so formed, the association shall be known and designated by the name of —— Agricultural Association, and by such name and style shall have perpetual succession, and shall have power and authority to contract and be contracted with, to sue and be sued, to have and use a common seal, to purchase and hold and lease real estate, with such buildings and improvements as may be erected thereon, and may sell and lease and dispose of the same at pleasure. The said real estate shall be used by such association for the purposes of holding exhibitions of horses, cattle, and other stock, of the agricultural, horticultural, viticultural, mechanical, manufacturing, and domestic products of such district, with view to the improvement of all the industries in the same.

Officers.

SEC. 13. The officers of such association shall consist of eight directors, who shall constitute a district board of agriculture for district number ——, a president, who shall be one of their number, and a secretary and treasurer not of their number.

Governor to appoint members.

SEC. 14. Within ten days after the formation of an agricultural association within any of the districts above constituted, in accordance with the provisions

of this act, and notice of such formation to the governor, the governor shall appoint eight resident citizens of such district as members of a district board of agriculture for said district, whose term of office shall be four years, except as hereinafter provided.

Organization.

SEC. 15. Within ten days after their appointment, the persons so appointed shall qualify as required by the constitution, and shall meet at a place within the district and organize by the election of one of their number as president of the board and association, who shall hold said office of president one year, and until his successor is elected; they shall also elect a secretary and treasurer.

Terms.

SEC. 16. At the same meeting the members of the board shall, by lot or otherwise, classify themselves into four classes of two members each. The terms of office of the first class shall expire at the end of the first fiscal year; of the second class, of the second fiscal year; of the third class, of the third fiscal year; and of the fourth class, at the end of the full term of four years. The fiscal year shall be from December first to December first.

State institution.

SEC. 17. Each association so formed and organized is hereby declared and shall be recognized a state institution, and the board so appointed and qualified shall have the exclusive control and management of such institution for and in the name of the state, and shall have the possession and care of all the property of the association, and shall fix the terms of office, and the bonds of the secretary and treasurer, and determine their salaries and duties. They shall have power to make all necessary by-laws, rules, and regulations for the government of the association and the management of its prudential and financial affairs. They shall provide for an annual fair or exhibition by the association of all the industries and industrial products in the district at such time and place as they deem advisable; provided, that no district fair shall be held in any of the districts at the same time of the state fair; and provided further, that the state shall in no event be liable for any premium offered, or award, or for any debt contracted by any district board of agriculture or agricultural association.

Report to state board of agriculture.

SEC. 18. When any district board of agriculture shall have been classified and organized as herein provided, the secretary of the board shall report such classification and organization to the state board of agriculture; he shall also report the same to the governor, and shall report any vacancy that may occur in the board to the governor, who shall fill the same by appointment for the unexpired term. The governor shall have the power and authority to remove a director at any time for good and sufficient cause, and to appoint a director to fill the vacancy.

SEC. 19. All laws and parts of laws in conflict with this act are hereby repealed.

SEC. 20. This act shall take effect from and after its passage.

Sections 3, 4, 9, and 11 of the above act, as above appearing, were amended so to read, by an act approved March 6, 1883, Stats. 1883, 30, which took effect immediately; and section 18 was amended to read as above by an act approved March 9, 1885, to take effect immediately, Stats. 1885, 39. Section 8 was amended as above March 14, 1885, to take effect immediately, Stats. 1885, 126.

References to special acts.—There are a

number of special acts relating to the California State Agricultural Society, which may be referred to as follows:

Submitting to people of city and county of Sacramento proposition to appropriate money for purchase and construction of suitable grounds and buildings for use of state agricultural society and for other purposes in city of Sacramento, 1859, 20.

To condemn certain streets and alleys (in Sacramento) for use of California State Agricultural Society, 1861, 228.

Providing for permanent improvement of stock grounds belonging to state agricultural society, 1861, 272.

Providing for printing report, 1861, 501.

For relief of state agricultural society, 1863–4, 313.

For the encouragement of agriculture, 1869–70, 820.

To aid in improvement of lands of state agricultural society, 1873–4, 619.

To appropriate money (sixteen thousand one hundred and forty-one dollars and eighty-four cents) to pay outstanding indebtedness, contracted in erecting the grand-stand, etc., 1875–6, 574.

To appropriate four thousand dollars for the erection of a state agricultural and industrial exhibition building on the state capitol grounds on condition that Sacramento would raise a like sum, 1883, 64.

Agricultural societies.—The Civil Code, sections 286 and 620, provides for the incorporation of agricultural societies, and has superseded the old laws upon the subject. The old laws are in force only in so far as they affect societies organized under them, and have no longer any general application. They are therefore omitted. They, as well as references to all the special acts relating to the subject, will be found in the "General Laws," sections 294 et seq., and "Supplement," sections 7398 et seq. The two following special acts of 1872, relating to agricultural societies, may be consulted:

An act for the encouragement of agriculture and other industries, approved March 21, 1872; 1871–2, 442. This act is given under the preceding head on account of its application to the state agricultural society; but it also applies to other societies named in it.

An act concerning assessments upon the stock of corporations (relating to the collection of assessments upon the southern district agricultural association), approved March 27, 1872; 1871–2, 626.

An act entitled "An act to amend an act concerning agricultural societies, approved March 12, 1859," approved February 15, 1878; 1877–8, 84. This act amended section 3 of the act referred to in the title.

An act for the encouragement of agriculture and other industries, approved March 18, 1878; 1877–8, 332. This act made appropriations to the state and various district and county agricultural societies; required them to make reports to the state agricultural society, and required the state agricultural society to report to the governor.

An act making an appropriation for the benefit of the Southern California Horticultural Society, approved April 1, 1878; 1877–8, 968. This act appropriated one thousand two hundred and fifty dollars a year for two years to the society named.

Information Relating to Agriculture.

An Act to provide for the collection of information relating to the agricultural and other industrial pursuits of this state.

[Approved March 10, 1866; 1865–6, 201.]

Assessors to collect information.

SECTION 1. It shall be the duty of the several county, district, and township assessors of this state, at the time of making their annual assessments, to collect a full and true statement of all the agricultural and industrial pursuits and products of their several counties, districts, and townships, for the preceding year, and such other information as they may be required by the surveyor-general to collect, and to report the same to the office of the surveyor-general, between the first day of September and the first day of November of each year, upon blanks to be furnished by him.

Penalty for failure to collect.

SEC. 2. The board of supervisors of the several counties of this state are hereby directed to reserve, in their final settlement with their county, district, and township assessors, a sum equal to twenty-five per cent of the amount allowed by the state for making his annual assessment, until he shall furnish the certificate of the surveyor-general that a satisfactory report, as provided in section one of this act, has been received at his office, which certificate shall in all cases be given when a satisfactory report has been made.

Duplicate copy of assessor's roll.

SEC. 3. The surveyor-general shall furnish to the secretary of the board of agriculture a duplicate copy of each statistical report of the assessors as soon as the same may be received by him.

Distribution of printed copies.

SEC. 4. The surveyor-general shall forward a printed copy of this act to each of the board of supervisors in this state, and to each of the county, township, and district assessors.

SEC. 5. This act shall take effect immediately.

ALAMEDA COUNTY.

References to special and local acts.—Boundaries, 1853, 56.

Seat of justice, 1853, 56; 1856, 26.

Creating Alameda county and providing for organization, 1853, 56, 80; 1854, 219; 1856, 26; 1858, 208.

Fixing time of holding courts authorized to be held by county judge, 1854, 42; 1857, 253; 1861, 8.

Incorporating town of Alameda, 1854, 76.

To adjust indebtedness to Santa Clara county and provide for payment, 1854, 186, 219; 1857, 105.

Creating board of supervisors, 1855, 37; 1856, 78.

Authorizing board of supervisors to reassess taxable property, etc., 1855, 227.

Authorizing sheriff to collect delinquent taxes assessed in 1854, 1855, and 1856, 74.

For relief of J. S. Marston, late treasurer, 1857, 9.

Granting sheriff additional time to make annual settlement for collection of taxes for 1856, 1857, 34.

Authorizing board of supervisors to levy special tax, 1857, 205.

Fixing compensation of assessor and his deputies, 1857, 256; 1858, 19.

Fixing compensation of sheriff, 1857, 256; 1858, 112.

Fixing compensation of treasurer, 1858, 112.

To adjust amount of indebtedness to Contra Costa county and provide for payment, 1858, 160.

Concerning roads and highways, 1858, 297; 1860, 119; 1862, 78; 1863, 576.

Authorizing board of supervisors to levy special tax for school purposes, 1859, 37.

Fixing salary of county judge, 1859, 244.

To improve navigation of San Antonio creek, 1859, 327.

Authorizing C. Minturn and others to construct and maintain wharf at Castro's Landing, 1859, 361.

Authorizing board of supervisors to make appropriations to agricultural societies, etc., 1860, 19.

Providing for opening channel across bar at mouth of San Antonio creek, 1860, 162; 1861, 20.

Authorizing and empowering Juana M. Estudillo to sell and convey interest of her infant child in certain real estate, 1861, 169.

Granting right of way for railroad from Corral Hollow to San Joaquin river, 1861, 309.

Concerning fees of sheriff, clerk, recorder, and treasurer, 1861, 477.

Authorizing H. Thorn and others to reconstruct and make wagon-road, 1862, 240; 1863, 578.

Authorizing C. C. Bowman and associates to construct wharf at western end of Encinal of San Antonio, 1862, 334.

Providing for equitable adjustment of claims arising from indebtedness of Contra Costa county, etc., 1862, 405.

Authorizing and requiring board of supervisors to pay claim of W. M. Gorham, 1862, 446.

Providing for election of two additional supervisors, 1863, 172.

Authorizing treasurer to collect taxes, 1863, 352; 1863–4, 44.

Authorizing board of supervisors to take and subscribe two hundred and twenty thousand dollars to stock of Alameda Valley Railroad Company, etc., 1863, 365.

Authorizing and empowering board of supervisors to improve navigation of San Antonio creek, 1863, 483; 1863–4, 274.

Authorizing San Francisco and Alameda Railroad Company to construct and maintain wharf at western end of Encinal of San Antonio, 1863, 499.

Regulating fees of officers, 1863, 544; 1863–4, 438.

Concerning fees of jurors, 1863, 740.

For assessing and collecting taxes, 1863–4, 95.

Providing for election of township assessors, 1863–4, 243.

Providing for erection of jail and repair of court-house, 1863–4, 244.

Providing for time of holding county court and probate court, 1863–4, 295.

Authorizing A. B. Forbes and associates to construct wharf at Green Point, 1863–4, 315.

To give mileage to grand and trial jurors, 1865–6, 167.

Appointment of notaries public, 1865–6, 234; 1869–70, 802.

Hogs running at large, 1865–6, 323.

Stallions running at large, 1865–6, 327; 1867–8, 70; 1869–70, 68.

Terms of district court, 1865–6, 328.

Roads and highways, 1865–6, 566; 1867–8, 374; 1869–70, 456.

Public pounds for estrays, 1865–6, 612; 1867–8, 479; 1869–70, 306.

Public schools in, 1865–6, 659.

To legalize the location of the San Francisco and Alameda Railroad, 1867–8, 5, 427.

For the relief of Henry N. Morse, sheriff, 1867–8, 40; 1869–70, 121.

To authorize Z. B. Heywood and others to construct wharf, 1867–8, 87.

To provide for the election of township assessors, 1867–8, 139.

Election of additional supervisors, 1867–8, 147.

Auditor to certify to money in treasury, 1867–8, 166.

To authorize Antonio Giorgiana and others to maintain wharf, 1867–8, 200.

To provide for the erection of a jail and county recorder's office, 1867–8, 308.

To provide for the payment of the state's portion of the salaries of the county auditor, 1867-8, 370.
Regulating bond of recorder, 1869-70, 59.
Franchise to Gideon Aughinbaugh and others for wharf at Encinal, 1867-8, 485.
Navigable streams in, 1867-8, 486, 680.
To separate the office of county recorder from county clerk, and for the election of county recorder, 1867-8, 554; 1869-70, 76.
Franchise to board of supervisors for bridge and roadway, 1869-70, 296.
To legalize conveyances made by G. C. Thomson, 1869-70, 280.
Destruction of squirrels, 1869-70, 316.
Act in relation to herding sheep, 1869-70, 304.
Protection of fish and game, 1869-70, 325.
To prevent hunting on private grounds, 1869-70, 343.
To fix the compensation of under-sheriff, 1869-70, 453.
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Delinquent taxes, collection of, 1869-70, 722; 1875-6, 484.
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To prevent propagation of Scotch or Canada thistle, 1871-2, 214.
Concerning roads and highways, 1871-2, 247, 534, 895.
Incorporating town of Alameda, 1871-2, 276; 1873-4, 448; 1875-6, 367.
To prevent hunting and shooting on private grounds, 1871-2, 304.
To declare Warm Springs creek navigable, 1871-2, 307.
Authorizing treasurer to pay certain claims against the county, 1871-2, 419.
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Incorporating town of San Leandro, 1871-2, 458; 1873-4, 63.
Supervisors to audit certain claims against road fund of Washington township, 1871-2, 559.
Empowering trustees of Mountain View cemetery to make mortgage, 1871-2, 582.
Salary of district attorney, 1871-2, 653.
In second congressional district, 1871-2, 714.
Salaries of county officers, 1871-2, 720.
Herding of sheep, 1871-2, 909.
Exempted from act concerning wharves on overflowed lands, 1871-2, 909.
Enabling supervisors to erect public buildings in Oakland, 1873-4, 58.
Charter of San Leandro, 1873-4, 63.
Abolishing office of county assessor, and creating township assessors, 1873-4, 90.
Salaries of certain officers, 1873-4, 185; 1875-6, 166.
Authorizing Mountain View Cemetery Association to issue bonds, 1873-4, 240.
Declaring Alameda creek a navigable stream, 1873-4, 308.
To abate squirrel nuisance, 1873-4, 321; 1875-6, 338.
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To provide funds for school department of town of Alameda, 1873-4, 567.
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Providing for erection of county buildings, 1873-4, 594.
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In relation to certain streets in town of Alameda, 1873-4, 795.
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To regulate fees, 1875-6, 127.
To pay for painting Webster street bridge, 1875-6, 207.
To incorporate town of Haywards, 1875-6, 215.
To prevent catching of fish with seines, nets, or wears in San Antonio creek, 1875-6, 362.
To authorize county clerk to employ two additional deputies, 1875-6, 365.
Providing for opening of streets in town of Alameda, 1875-6, 424.
Providing for first election in town of Haywards, 1875-6, 624.
To create West Side irrigation district, 1875-6, 731, 885.
To provide a supply of water for university, and deaf, dumb, and blind asylum, 1875-6, 816.
To facilitate construction of canal for improvement of Oakland harbor, 1875-6, 862.
To incorporate town of Livermore, 1875-6, 913.
Giving supervisors control of bridge over San Antonio estuary, 1877-8, 3.
Concerning special election in fourteenth senatorial district on January 22, 1877, 1877-8, 22.
To transfer certain funds and pay certain warrants, 1877-8, 59.
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Relating to certain duties of constables, 1877-8, 105.
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Confirming resolution of supervisors concerning Berkeley Horse Railroad Company, 1877-8, 136.
To provide for transfer of moneys by treasurer to and from state treasury, 1877-8, 170.
For relief of T. Mulloy, road overseer of Brooklyn road district, 1877-8, 251.
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In relation to collection of licenses, 1877-8, 255.
To pay claim of E. Kimball, 1877-8, 328.

Providing compensation for assessor of Oakland township, 1877–8, 557.

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To provide funds for school department, 1877–8, 599.

For establishment of receiving hospital, 1877–8, 640.

Fixing pay of supervisors, 1877–8, 736.

Providing for road on Bay Farm island, 1877–8, 848.

Repealing "West Side irrigation district" acts of 1876, 1877–8, 887.

To incorporate the town of Berkeley, 1877–8, 888.

Relative to powers of sheriff in attachment cases, 1877–8, 922.

For erection of building for library and art-gallery at university, 1877–8, 930.

For payment of outstanding bonds, 1877–8, 942.

Defining third judicial district, 1877–8, 944.

Fixing salaries of under-sheriff, deputy sheriffs, and county jailers, 1877–8, 950.

In relation to certain streets in town of Alameda, 1877–8, 964.

Repealing act of 1878 relative to executions from justices' courts, 1880, 19 (Ban. ed. 62).

For erection of buildings for deaf and dumb and blind asylum, 1880, 37 (Ban. ed. 190).

Additional superior judge for Alameda county, 1881, 20.

For the relief of Robert McKillican, March 5, 1885.

City of Oakland.—Incorporating town of Oakland and providing for construction of wharves, 1852, 180; 1854, 52.

Incorporating city of Oakland, 1854, 46; 1857, 181; 1860, 67; 1861, 367, 384; 1862, 337; 1863, 471, 773; 1863–4, 393; 1873–4, 804; 1875–6, 567.

To provide for funding outstanding debt and prevent creation of new debts, 1855, 218; 1858, 308; 1861, 99.

To provide for collection of delinquent taxes, 1861, 285.

Granting to R. Gibbons and others right to construct and maintain railroad through certain streets, 1861, 656.

Legalizing assessment and levy of city taxes and authorizing collection of same, 1862, 485.

Ratifying and confirming ordinance passed by common council (concerning San Francisco and Oakland Railroad), 1863, 691.

Authorizing city council to improve streets, lanes, alleys, courts, and places, 1863–4, 333; 1875–6, 340.

Oakland Railroad Company granted the right of way for track, 1865–6, 164; 1867–8, 31.

To establish a police court, 1865–6, 193.

Creating a board of education, 1865–6, 529.

In relation to the city courts, 1865–6, 567.

Franchise to R. J. Vandewater for railroad in streets of, 1865–6, 605.

To postpone the next charter election, 1867–8, 148.

To provide funds for school department, 1867–8, 148.

To establish and define powers and duties of board of education, 1867–8, 171; 1871–2, 174.

City council to purchase land and erect a city hall, and provide for the payment of same, 1867–8, 196, 493.

To enable the city to settle its controversies, 1867–8, 222.

Franchise granted to E. Tompkins and others to lay railroad track in streets, 1867–8, 475.

Empowering the city council to remove obstructions at San Antonio creek, 1867–8, 501.

Corporate name of First Congregational Church changed, 1897–8, 708.

To authorize city council to lay out, open, or improve streets, 1869–70, 38, 443; 1871–2, 20.

Ratifying and confirming action for relief of John Scott, 1869–70, 89.

Ordinance to light streets confirmed, 1869–70, 302.

To provide for paying certain claims against the city, and to contract a funded debt, 1869–70, 372.

To provide funds for school department, 1869–70, 370.

Construction of swing and draw bridge across San Antonio creek, 1869–70, 693.

Exempted from provisions of act concerning wharves, 1869–70, 698.

Regulating collection of delinquent taxes, 1869–70, 722.

To change name of Oakland Cotton Manufacturing Company, 1871–2, 45.

Legalizing ordinances of Oakland in reference to penalties, 1871–2, 75.

To provide funds for school department, 1871–2, 420.

To provide funds for city of Oakland, 1871–2, 590.

Exempted from act concerning wharves on overflowed land, 1871–2, 909.

For relief of Perry Johnson, 1873–4, 104.

To postpone charter election, 1873–4, 179.

For relief of W. W. Foote, 1873–4, 338.

Authorizing First Congregational Religious Society to convey real estate, 1873–4, 529.

Authorizing construction of main sewer, 1873–4, 530.

For relief of J. N. Bailey, 1873–4, 690.

Supplementary to incorporation act, 1873–4, 804.

Authorizing issue of bonds, 1873–4, 845.

For obtaining supply of water, 1873–4, 892.

Appropriation to Ladies' Relief Society, 1873–4, 898.

Concerning police court, 1873–4, 906.

Resolution concerning harbor improvement, 1873–4, 992.

To district city into wards, 1875–6, 62.

Fixing time for holding municipal elections, 1875–6, 64.

Authorizing trustees of First Congregational Religious Society to convey certain real estate, 1875–6, 65.

Fixing salary of city assessor, 1875–6, 148.

Fixing salary of superintendent of public schools, 1875–6, 169.

To pay N. W. Spaulding for painting Webster street bridge, 1875–6, 207.

Regulating laying of gas and water pipes, 1875–6, 312.

Providing for opening streets, 1875–6, 468.

Authorizing city council to grant certain privileges to Alameda, Oakland, and Piedmont Railroad Company, 1875–6, 499.

For construction of bridge across San Antonio estuary between Eighth and East Ninth streets, 1875–6, 653.

To facilitate construction of canal for improvement of harbor, 1875–6, 862.

Authorizing city to construct main sewers, 1875–6, 896.

Relating to plazas conveyed for county buildings, 1877–8, 69.

Confirming ordinance abandoning certain streets in East Oakland, 1877–8, 71.

Supplemental to act of April 3, 1876, for improvement of Oakland harbor, 1877–8, 113.

For relief of school department, 1877–8, 183.

Appropriations of moneys to certain benevolent societies, 1877–8, 252.

Enabling city to acquire and maintain public water-works; 1877–8, 427.

Providing compensation for assessor, 1877–8, 557.

To provide for opening of streets, 1877–8, 614.

Providing superintendent of public schools clerical assistance, 1877–8, 735.

Amending act districting city into wards 1877–8, 843.

For relief of Oakland Guard, 1877–8, 952.

ALPINE COUNTY.

References to special and local acts.—The act creating Alpine county, defining its boundaries, and providing for its organization will be found, 1863–4, 178.

An act defining legal distances from county seat to capital, lunatic asylum, and state prison, 1863–4, 306.

Incorporation of town of Markleeville, 1863–4, 441.

Legalizing assessment for taxes, 1865–6, 30.

Hospital fund abolished and contingent expenses provided for, 1865–6, 121; 1873–4, 101.

Salaries of county judge and district attorney, 1865–6, 123.

Meetings of board of supervisors, 1865–6, 154.

Public roads and road fund, 1865–6, 167.

Toll for transportation of wood and logs down Carson river, 1865–6, 350.

Sheriff McBeth to execute certain deeds, 1865–6, 512.

Payment of debt due to Amador county, 1865–6, 629; 1867–8, 81; 1869–70, 385; 1873–4, 276.

Terms of district-court in, 1865–6, 863; 1867–8, 33.

For the relief of Anna Lee, 1867–8, 664.

To prevent stallions from running at large, 1869–70, 68.

Act for the relief of R. M. Folger, 1869–70. 358.

Delinquent taxes, act in relation to, 1869–70 653.

Salary of district attorney, 1871–2, 654.

Salaries and fees of officers, 1871–2, 703.

In second congressional district, 1871–2, 714.

As to taking effect of certain sections of codes, 1871–2, 845.

Leave of absence to J. B. Scott, sheriff, 1873–4, 46.

Traveling fees of sheriffs and constables, 1873–4, 236.

In twenty-third senatorial district, 1863–4, 369.

To protect treasury, 1873–4, 393.

To extend time for selling property for delinquent taxes, 1873–4, 475.

Fixing penal sum of bond of treasurer, 1875–6. 140.

To extend time for selling property for delinquent taxes, 1875–6, 389. Repealed, see *infra*.

Authorizing tax for payment of grand and trial jurors, 1877–8, 215.

To regulate traveling fees of sheriffs and constables, 1877–8, 372.

Repealing act of March 22, 1876, extending time for delinquent tax sale, 1877–8, 783.

AMADOR COUNTY.

References to special and local acts.—Boundaries, 1854, 157; 1855, 113, 134; 1857, 251; 1863, 231; 1863–4, 178.

Seat of justice, 1854, 157; 1855, 135.

Granting to electors of Calaveras county privilege to vote for or against division of county and to organize Amador county, 1854, 156.

Attaching portion of El Dorado county to Amador county, 1855, 113.

Providing for ascertainment of indebtedness of Calaveras county prior to organization of Amador county, and to provide for payment of portion due from Amador, etc., 1855, 165.

Concerning office of public administrator, 1856, 80; 1858, 114, 297; 1859, 24, 96, 234.

Fixing compensation of supervisors, 1857, 239.

Fixing time at which county officers shall be elected, 1858, 236.

Fixing time of holding county court and court of sessions, 1859, 32.

Regulating fees of certain officers, 1859, 159.

Fixing compensation of members of board of supervisors, 1860, 20.

Granting further powers to board of supervisors (to erect guide-boards), 1860, 187.

In relation to revenue (duty of assessor), 1861, 56.

Providing for construction of wagon-road from Antelope Springs to Hope Valley, 1861, 67.

Granting right to construct turnpike between Jackson and Ione City, 1861, 95; 1862, 6.

Providing for collection of delinquent taxes, 1861, 216.

In relation to Sutter creek in Ione City and vicinity, etc., 1861, 267.

Granting right to construct bridge across Mokelumne river at Middle bar to A. Denzler and associates, 1862, 16.

Authorizing board of supervisors to levy special tax and create redemption fund for payment of outstanding road warrants, 1862, 34; 1863, 185.

In relation to public roads and road fund, 1862, 47; 1863, 319.

Granting right to construct bridge across Mokelumne river at Big bar, and to construct and maintain road from Mokelumne Hill to Butte, 1862, 76.

For relief of W. J. Paugh, late sheriff, 1862, 116.

Granting to E. P. Bowman and associates right to construct and maintain toll-bridge across Cosumnes river, 1862, 131.

Providing for construction of wagon-road

from Antelope Springs by Safford survey to Hope Valley, 1862, 284.

Authorizing executrix and executor of John Frye, deceased, to sell real estate, 1862, 329.

Creating offices of township collectors and assessors, 1862, 429; 1863, 44; 1863-4, 446; 1865-6, 474, 618.

Granting to Larkin Lamb and associates right to construct and maintain toll-bridge across Cosumnes river, 1863, 40.

Granting right to construct turnpike from Doshe's store in Ione valley to Jackson, 1863, 93; 1863-4, 65; 1865-6, 514.

Granting right to construct turnpike from Fiddletown to Pokerville, 1863, 120.

Defining boundary line between Amador and El Dorado counties, 1863, 231.

Authorizing board of supervisors to levy additional tax for county expenditures, 1863, 304.

Providing for furnishing county officers with statutes and supreme court reports, 1863, 306.

Granting right to construct turnpike from Sutter Creek to Volcano, 1863, 309.

Authorizing sale of certain property of Jesse Cope and other minors, 1863, 316.

Granting right to construct turnpike between Pine Grove and Antelope Springs, 1863, 329.

Granting right of way over certain lands for construction of wagon-road to W. B. Carr and associates, 1863, 330.

Granting to J. McNealy and associates right to construct and maintain toll-bridge across Mokelumne river, 1863, 485.

To create and organize fire department for Jackson, 1863, 671.

Legalizing assessment of taxes, 1863-4, 66.

Changing time for holding county court and probate court, 1863-4, 91.

Authorizing board of supervisors to levy additional tax for county expenditures, 1863-4, 107.

Granting right to construct turnpike between Pine Grove and point on road leading up middle fork of Jackson creek, etc., 1863-4, 122.

Creating Alpine county, 1863-4, 178.

Changing time for holding county and probate courts, 1865-6, 9.

Legalizing taxes in part of, 1865-6, 30.

Exempted from act incorporating canal-companies, 1865-6, 53, 604; 1867-8, 134.

Additional tax for county expenses, 1865-6, 68.

Act relating to indigent sick, 1865-6, 160.

Special tax for bridge purposes, 1865-6, 162, 1867-8, 91.

To provide for keeper of public jail, 1865-6, 316.

To prevent stallions from running at large, 1865-6, 327; 1867-8, 70; 1869-70, 68.

Franchise to M. Heffran and others for turnpike road, 1865-6, 465.

Payment of interest on debt to Calaveras county, 1865-6, 471, 629.

Franchise to F. A. Bishop and others for turnpike road, 1865-6, 478.

Exempted from act incorporating canal companies, 1865-6, 605.

Powers and duties of supervisors, 1865-6, 530; 1867-8, 676.

Act to provide for payment of debt due by Alpine county, 1865-6, 629; 1867-8, 81; 1869-70, 385.

Franchise to R. Stewart and others for a turnpike to Antelope Springs, 1865-6, 801.

To levy special tax for bridge purposes, 1867-8, 91.

Legalizing acts of board of superviors acting as board of equalization, 1867-8, 84.

Salary as superintendent of schools, 1867-8, 279.

Act incorporating canal companies not to apply to, 1867-8, 134.

Hogs running at large, 1867-8, 430.

Tax for county expenditures, 1869-70, 60.

To levy additional tax for county purposes, 1869-70, 65.

Legalizing election of officers, 1869-70, 71.

Granting leave of absence to county clerk, 1869-70, 85.

Act in relation to phonographic reporters, 1869-70, 325.

Redemption of outstanding warrants, 1869-70, 337.

Granting leave of absence to district attorney, 1869-70, 388.

Public roads and road fund, 169-70, 567.

Township collectors and assessors, act repealed, 1869-70, 637.

For the relief of Francis McGrath, 1869-70, 804.

Supervisors to levy additional tax, 1871-2, 172.

To prevent hogs running at large, 1871-2, 510.

To pay certain moneys to James Carroll, 1871-2, 560.

Salary of district attorney, 1871-2, 653.

To pay debt due to Calaveras county, 1871-2, 698.

In second congressional district, 1871-2, 714.

As to taking effect of certain sections of codes, 1871-2, 845.

Payment of debt from Alpine county, 1873-4, 276.

To prevent hogs and goats from running at large, 1873-4, 319.

In sixteenth senatorial district, 1873-4, 368.

To protect treasury, 1873-4, 393.

Relating to board of supervisors, 1873-4, 443.

In relation to roads and indigent sick, 1873-4, 444.

In relation to revenue, 1873-4, 446.

As to special school tax in Sutter Creek school district, 1873-4, 729.

Incorporating town of Sutter Creek, 1873-4, 887; repealed 1875-6, 40.

To prevent hogs and goats running at large, 1873-4, 905.

To regulate salaries and fix compensation of county officers, 1875-6, 370.

To prevent hogs and goats running at large in town of Sutter Creek, 1875-6, 402.

To fix terms of county and probate courts, 1875-6, 403.

To change name of Fiddletown to Oleta, 1877-8, 109.

To prevent trespassing of goats, 1877-8, 536.

To levy tax for bridge purposes in township No. 1, 1877-8, 560.

To provide a new great register, 1877-8, 693.

For construction of public roads, 1877-8, 703.

Providing for railroad from Ione to Sutter Creek or Jackson, 1877-8, 841.

Declaring a certain portion of Amador and Nevada wagon-road a toll-road, 1877-8, 963.

To prevent hogs and goats running at large in Plymouth, 1877-8, 1020.

AMENDMENT TO CONSTITUTION.

See CONSTITUTION.

Since the publication of "Hittell's General Laws," in which a succinct account of the legislation in reference to amendments of the state constitution up to the year 1865 was given, at paragraph 212, there has been some further legislation as follows:

The legislature of 1865–6 proposed an amendment, in the way of an additional section, to article 1, by act approved April 2, 1866: 1865–6; 875. The next legislature of 1867–8 adopted and agreed to the proposed amendment by act approved March 30, 1868; 1867–8, 685. The following legislature of 1869–70 provided for a submission of the amendment to the people by act approved March 24, 1870; 1869–70, 367. It was accordingly submitted to vote at the next general election and duly ratified.

The legislature of 1871–2 proposed an amendment to section 21 of article 11 in relation to the publication of laws, decrees, regulations, and provisions, by an act which seems to have been approved April 1, 1872; 1871–2, 892. The legislature of 1873–4 adopted and agreed thereto by act of March 27, 1874; 1873–4, 719. No further action has been taken in relation to it.

The legislature of 1873–4, on March 27, 1874, 1873–4, 732, approved an act by which they recommended the electors of the state to vote at the next general election for or against a convention to revise and change the constitution. In accordance with this act, the question of a constitutional convention was submitted to the people at the general election in September, 1875, and the vote was against such a convention.

The same legislature of 1873–4, by an act approved March 30, 1874, 1873–4, 913, proposed a large number of amendments embracing a remodeling of the entire constitution; and by a subsequent act of March 30, 1874, 1873–4, 939, referred the subject to the next legislature, and ordered the proposed amendments to be published for three months before the general election of 1875, which was done.

The legislature of 1875–6, by an act approved April 3, 1876, 1875–6, 791, recommended the electors of the state, at the first general election thereafter, to vote on the question of calling a convention to revise and change the constitution; and the secretary of state was required to lay an abstract of the votes cast before the legislature of 1877–8.

The session laws of 1875–6, 929, also contain what purports to be an adoption and agreement of the legislature of 1875–6, to the amendments to articles 2 and 6 of the constitution, as proposed, adopted, and agreed to by the legislature of 1873–4; but it is not in the form of an act, nor is it approved or dated as an act or resolution.

By an act approved February 14, 1883, an amendment to the constitution of 1879 was submitted to the people relative to the privilege of laying pipes in cities, amending section 19 of article 11. It was ratified at the next general election.

So also by an act approved March 15, 1883, an amendment to section 7 of article 9, relative to the compilation of text-books by the state board of education, was submitted to the people and ratified at the next general election.

At the twenty-sixth session of the legislature the following amendments to sections 1, 8, 10, and 11 of article 13 were adopted on March 5, 1885, 1885, 27.

All property to be taxed.

SECTION 1. All property in the state, except railroads not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; provided, that growing crops, property used exclusively for public schools, and such as may belong to the United States, this state, or any county or municipal corporation within this state, shall be exempt from taxation. Growing vines and fruit-trees shall be deemed to be and shall be assessed and taxed as a part of the realty; and provided further, that railroads shall be taxed as provided in section ten of this article; and provided further, that the legislature may provide for the exemption from taxation of ships and vessels owned and registered or enrolled in this state, or may tax such ships and vessels on their gross or net earnings, in lieu of an ad valorem tax. The legislature may also provide, except in case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this state. Double taxation in any form is prohibited.

Tax-payer to render statement.

SEC. 8. The legislature shall by law require each tax-payer in this state to make and deliver to the county assessor, annually, a statement under oath, setting forth specifically all property, real and personal, except railroad prop-

erty, as defined in section ten of this article, owned by such tax-payer, or in his possession, or under his control, at twelve o'clock, meridian, on the first Monday in March.

Income tax of railroads.

SEC. 10. All property, except railroad property, as hereinafter provided, shall be assessed in the county, city, city and county, town, township, or district in which it is situated, in the manner provided by law. Every corporation and person owning or operating a railroad, or any portion thereof, in this state shall, on or before the first day of July of each year, pay to the state treasurer an annual tax of two and a half per cent upon the gross earnings earned within this state of such railroad for the year ending upon the thirty-first day of December next preceding; which tax shall be in lieu of all other state and county taxes upon the franchise, business, right of way, roadway, road-bed, rails, rolling stock, fences, stations, and their appurtenances, and upon ferry-boats when operated as a part of such railroad, and upon the shares of the capital stock, and upon the mortgages, deeds of trust, contracts, or other obligation by which a debt is secured upon such property. All other property belonging to such corporation or person shall be assessed and taxed as other property is assessed and taxed. The gross annual earnings, earned during the year ending on the thirty-first day of December last preceding, of all railroads, shall be annually, before the first day of May thereafter, ascertained and declared by the state board of equalization, under such rules and regulations as may be prescribed by said board; provided, however, that the legislature may at any time pass laws prescribing said rules and regulations. In all cases where railroads are situated partly within this state and partly without this state, the gross annual earnings thereof shall be ascertained and determined by taking:

1. The gross earnings which, during the year last preceding, have been earned wholly within this state.

2. The gross earnings which, during the same year, have been earned partly within this state and partly without this state, which shall be ascertained by apportioning such earnings between this state and other states or territories, in the proportion which the number of miles of such railroad situated in this state and used in making such earnings bears to the whole number of miles thereof by the use of which such earnings have been made. The proportion of interstate earnings thus ascertained shall be added to the earnings made wholly within the state, and the total thus obtained shall be taken and deemed to be the gross earnings of such railroads for all purposes of assessment and taxation. For every purpose of this section, except for the purpose of ascertaining the proportion of interstate earnings to be added to the earnings made wholly within this state, all railroads operated as one system shall be treated as one road. One third of the tax paid by corporations of persons owning or operating railroads under the provisions of this section shall become part of the general fund of this state, and two thirds thereof shall be paid to the county or counties in which said railroad is situated, in proportion to the length of the railroad operated in the several counties. For the purposes of this section a consolidated city and county shall be treated as a county. Any corporation, association, partnership, person, or persons, unlawfully failing or refusing to pay the tax herein provided, when the same shall become due, or within thirty days thereafter, shall be deemed to have waived their right to operate their railroads

within this state. The taxes herein provided for, together with such penalties as the legislature may impose for the non-payment thereof, shall be a lien upon the property hereinbefore in this section designated, and may be enforced in such manner as the legislature may by law prescribe. All railroads, so far as the same are situated within the boundaries of any common-school district, shall be subject to an ad valorem tax for school purposes voted by the electors of the district, at a special election held for that purpose, the same as other property situated within the district, anything in this article to the contrary notwithstanding. And all railroads, so far as they are situated within the boundaries of any incorporated city or town, shall be subject to an ad valorem tax for municipal purposes, the same as other property situated therein, anything in this article to the contrary notwithstanding.

Income taxes.

SEC. 11. Income taxes may be assessed and collected from persons, corporations, joint-stock associations or companies, resident or doing business in this state, or any one or more of them, in such cases and amounts and in such manner as shall be prescribed by law. No court within this state shall have power, by injunction or otherwise, to interfere with, hinder, or delay the collection of any tax laid under the form of law, except upon a showing that the same property has been taxed more than once for the same purpose in the same year, and then only upon payment to the tax collector, or into court, of a sum equal to the amount of one of the taxes so laid upon the property in question; provided, that in all cases actions may be maintained against the tax collector to recover illegal taxes paid under protest. All such actions must be commenced within thirty days after such illegal taxes have been paid. It shall be the duty of the courts in which such actions may be brought, to try them, upon the request of either party, in advance of all other civil actions, and such taxes so paid under protest shall be retained by the tax collector, or such other officer as the legislature may designate, until such actions shall have been finally decided.

Not to affect prior suits.

Nothing in this amendment shall affect any assessment or tax heretofore made or levied, or interest thereon, or any penalty heretofore incurred, or any action or right of action on account of any such assessment, tax, interest, or penalty; and all laws in force at the adoption of this amendment, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the legislature. The first levy and payment of taxes against railroad property hereunder shall be made in the year eighteen hundred and eighty-six, and shall be upon the gross earnings, to be ascertained as herein provided, for the entire year of eighteen hundred and eighty-five. Taxation for the fiscal year ending June thirtieth, eighteen hundred and eighty-five, is not affected by this amendment.

An Act to provide for the submission of proposed amendments to the constitution of the state of California to the qualified electors for their approval.

[Approved March 7, 1883; 1883, 53.]

Amendments to be advertised.

SECTION 1. Whenever the legislature shall propose any amendment or amendments to the constitution of this state, which amendment or amendments shall have been passed in the manner and form required by section one of article eighteen of the constitution, and no other mode is provided by law for the sub-

mission of such amendment or amendments to the people for their approval, it shall be the duty of the governor to advertise such proposed amendment or amendments in at least four newspapers of general circulation in this state, for three months next preceding the next general election. One of said newspapers must be published at the city of Sacramento, and two at the city of San Francisco; and in issuing his proclamation for an election at which any amendment or amendments to the constitution are to be voted upon, he shall include such amendment or amendments therein, and he shall designate them by numbers, in the order in which they have been proposed.

How they shall be voted upon.

SEC. 2. Each amendment shall be voted upon separately from the others, in the manner and form designated by the governor, which manner and form shall be printed with the amendment or amendments, and for the same length of time that they shall be advertised, as provided in section one of this act. The ballots used at such election shall contain the words "For the amendment," or the words "Against the amendment," written or printed thereon.

How the votes shall be canvassed.

SEC. 3. The votes cast for and against such proposed amendment or amendments shall be canvassed in the manner provided by law in the election of state officers other than governor and lieutenant-governor; and if the people shall approve and ratify such amendment or amendments, or any of them, by a majority of the qualified electors voting thereon, such amendment or amendments shall become a part of the constitution.

SEC. 4. This act shall take effect from and after its passage.

APIARIES.

See BEE-CULTURE.

ARTESIAN WELLS.

An Act to regulate the use of artesian wells and to prevent the waste of subterranean waters in this state.

[Approved March 9, 1878; 1877–8, 195.]

What artesian wells declared nuisances—Misdemeanor.

SECTION 1. Any artesian well which is not capped, or furnished with such mechanical appliance as will readily and effectively arrest and prevent the flow of water from such well, is hereby declared to be a public nuisance. The owner, tenant, or occupant of the land upon which such well is situated, who causes, permits, or suffers such public nuisance, or suffers or permits it to remain or continue, is guilty of a misdemeanor.

Same.

SEC. 2. Any person owning, possessing, or occupying any land upon which is situated an artesian well, who causes, suffers, or permits the water to unnecessarily flow from such well, or to go to waste, is guilty of a misdemeanor.

Artesian well defined.

SEC. 3. An artesian well is defined, for the purposes of this act, to be any artificial well, the waters of which will flow continuously over the natural surface of the ground adjacent to such well at any season of the year.

Waste defined.

SEC. 4. Waste is defined, for the purpose of this act, to be the causing, suffering, or permiting the waters flowing from such well to run into any river, creek, or other natural watercourse or channel, or into any bay, lake, or pond, or into any street, road, highway, or upon the land of any person other than that of the owner of such well, or upon public lands of the United States or of the state of California, unless it be used thereon for the purposes and in the manner that it may be lawfully used upon the land of the owner of such well; provided, that this section shall not be so construed as to prevent the use of such waters for the proper irrigation of trees standing along or upon any street, road, or highway, or for ornamental ponds or fountains, or the propagation of fish.

Proceedings for misdemeanor.

SEC. 5. Any person violating any of the provisions of this act may be proceeded against for a misdemeanor in any justice's court of the county in which such well is located, and shall, upon conviction, be fined for each offense not less than ten or more than fifty dollars. There shall also, upon conviction had, in addition to such fine, be taxed against such party the cost of prosecution. Such fine and costs may be collected as in other criminal cases, and the justice may also issue an execution upon the judgment therein rendered, and the same may be enforced and collected as in civil cases.

Duty of supervisors.

SEC. 6. It shall be the duty of the supervisors or road-masters, on complaint of any citizen within their respective districts, and for that purpose may at all proper times enter upon the premises where such well is situated; and it shall be his duty to institute, or cause to be instituted, criminal action for all violations of the provisions of this act, or for all public offenses defined in this act committed within such district.

Repeal.

SEC. 7. An act entitled "An Act to regulate the use of artesian wells and to prevent the waste of subterranean waters in Santa Clara and Los Angeles counties," approved March eighteenth, eighteen hundred and seventy-six, and all other acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

SEC. [8.] This act shall not apply to artesian wells in the county of San Bernardino.

SEC. 9. This act shall take effect and be in force on and after the first day of July, A. D. eighteen hundred and seventy-eight.

BANK COMMISSIONERS.

An Act creating a board of bank commissioners, and prescribing their duties and powers.

[Approved March 30, 1878; 1877-8, 740.]

Commissioners appointed—Who qualified.

SECTION 1. On or before the fifteenth day of May, A. D. eighteen hundred and seventy-eight, the governor shall appoint three competent persons, one of whom shall be an expert of accounts, to be styled bank commissioners, who shall hold office for a period of four years, and until their successors are appointed and qualified, and no two commissioners to be appointed under this

act shall be residents of the same county. The persons who are so appointed shall have no official connection with nor be in the employ of any saving bank, or bank, or banking company, or banking society, nor shall they, during their term of office, own or be interested in the stock or other property thereof. Said commissioners shall have their office in the city of San Francisco.

Official bonds.

SEC. 2. The bank commissioners, before entering upon the duties of their office, must each execute an official bond in the sum of twenty thousand dollars, and take the oath of office, all as prescribed by the Political Code for state officers in general.

Duties—License—Reports.

SEC. 3. The duties of the bank commissioners shall be, within sixty days after their qualification, to prepare and furnish to every saving bank, bank, and banking company incorporated under the laws of this state, or any other state or country, and doing business in this state, applying therefor in writing, a license, in the form to be prescribed by them, authorizing such corporations to use the name and to transact the business of a savings bank, bank, or banking company, for one year from the date of issuance thereof; provided, that such license may be issued at any time after said sixty days, subject to the disqualification mentioned in section seven of this act; to receive and place on file in their office the semi-annual reports required to be made by savings banks, or banks, or banking corporations, by this act; to prepare and furnish, on demand, to savings banks' officers, and the officers of banks or banking corporations, blank forms for such statements or reports as may by law be required of them; to make, on or before the thirtieth day of June, in each year, a report to the governor of this state, containing a tabulated statement and synopsis of the several reports which have been filed in their office since their last report, and any other proceedings had or done by them under this act, showing generally the condition of the savings bank, or banking business and interests in this state, and such other matters as, in their opinion, may be of interest to the public, with a detailed statement, verified by their oaths, of all moneys and fees of office received by them during the same period.

Visit and examine banks.

SEC. 4. It shall be the duty of one or more of the bank commissioners, as designated by the commissioners, once in six months, and as often as in their judgment may be deemed necessary, without previous notice, to visit and to make personally a full examination of each bank, saving bank, saving and loan society, or other society, association, company, or institution incorporated under the laws of this state, or any other state or country, and doing business in this state, for the accumulation and investment of funds and savings, or any trust company receiving any valuable thing in trust, or money on special deposit, or any person publicly receiving money on deposit for safe-keeping; to inspect all books, papers, notes, bonds, or evidence of debt of such corporations, and all securities; to ascertain the condition of every such corporation, its solvency, its ability to fulfill all its obligations, and report its condition to the attorney-general as soon as may be after such examination.

Power to examine officers.

SEC. 5. Such commissioners must examine, under oath, any of the officers, agents, and servants of any such corporation or person, in relation to the affairs and condition of such corporation or person, and may administer such oath per-

sonally, and whoever shall neglect or refuse, after demand and notice thereof, and without justifiable cause, to appear, or testify, under oath, before the said commissioners in the discharge of their duties, shall be deemed guilty of a misdemeanor, and on conviction thereof be punished by a fine not exceeding five thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

Insolvent corporations—Commissioner to report.

SEC. 6. If any bank commissioner shall have knowledge of the insolvency or unsafe condition of any corporation mentioned in this act, and shall neglect to report the same, in writing, to the attorney-general, as required by this act, he shall, on conviction thereof, be punished by a fine not exceeding ten thousand dollars nor less than five thousand dollars, or by imprisonment in the county jail not less than one year nor more than two years, or by both such fine and imprisonment, and his office shall be declared vacant by the governor, and a successor be appointed for the unexpired term.

Banks must procure license.

SEC. 7. No corporation shall, after the expiration of the time in that behalf limited by section three, use the name or transact the business of a savings bank, or bank, or banking corporation, without first procuring from the bank commissioners the license provided for by this act; and any corporation violating this provision shall forfeit the sum of one hundred dollars per day during the continuance of the offense; and any person who enters upon, engages in, or carries on, or in any manner attends to the business or management of a savings bank, or bank, or bank corporation, doing business without a license, after the expiration of such time, whether as manager, principal, agent, officer, employee, or otherwise, shall forfeit the sum of one hundred dollars for every day he so enters upon, engages in, or carries on, or attends to such business, and any violation of this section is also hereby declared to be a misdemeanor.

License received on what condition.

SEC. 8. No savings bank shall receive the license in this act provided for, unless at least fifty per cent of all its loans shall be secured by first mortgage, or other prior lien, upon real estate situate within this state; such loans, at the date when made, hereafter, not to exceed sixty per cent of the market value of the security, except when made for the purpose of facilitating the sale of property owned by the corporation. And it shall be unlawful for any savings and loan society, or savings bank, to purchase, invest, or loan its capital, or the money of its depositors, or any part of either, in mining shares or stocks. Any president or managing officer who knowingly consents to a violation of the above provision shall be deemed guilty of a felony.

Semi-annual reports.

SEC. 9. Every savings bank, or bank, or banking corporation, doing business in this state, if incorporated before the passage of this act, shall, twice in every year, to wit, within thirty days after the expiration of its semi-annual fiscal term, and every savings bank, or bank, or banking corporation, hereafter to be incorporated, shall, twice in each year, to wit, on the twentieth day of January and the twentieth day of July, make a report, in writing, to the bank commissioners, verified by the oath of its president and secretary, or cashier, or its two principal officers; and the semi-annual fiscal term of the savings banks, or banks, or banking corporations, hereafter incorporated, shall expire on the last day of June and the last day of December, in each year. Such report

shall show the actual financial condition of the bank making such report, upon the thirtieth day of June and the thirty-first day of December, of each year, by stating:

1. The amount of its capital stock, and the number of shares into which it is divided;

2. The names of its directors, and the number of shares of stock held by each;

3. The total amount actually paid, in coin, by stockholders for capital stock, and the total amount of reserve fund, if any;

4. The total amount due to depositors;

5. The total amount and character of any other liabilities it may have;

6. The amount at which the lot and building, occupied by the bank for the transaction of its regular business, stands debited on its books, together with the market value of all other real estate held, whether acquired in settlement of loans or otherwise; the amount at which it stands debited on the bank books; in what county situated, and in what name the title is vested, if not in the name of the corporation itself;

7. The amount loaned on real estate, specifying the amount secured on real estate in each county separately; also specifying the name of the person in whose name the property is held in trust, or as security, in case it is held in any name other than that of the savings bank, and when the instrument creating the security does not of itself disclose the name of the savings bank;

8. The amount invested in bonds, designating each particular class, and the amount thereof;

9. The amount loaned on stocks and bonds, designating each particular class, and the amount thereof;

10. The amount of money loaned on other securities, with a particular designation of each class, and the amount loaned on each;

11. The actual amount of money on hand or deposited in any other bank or place, with the name of the place where deposited, and the amount in each place;

12. Any other property held, or any amount of money loaned, deposited, invested, or placed, not otherwise herein enumerated, with the place where situate, and the value of such property, and the amount so loaned, deposited, or placed.

The oaths of the officers to the statements above required shall state that they, and each of them, have a personal knowledge of the matters therein contained, and that they believe every allegation, statement, matter, and thing therein contained is true; and any willfully false statement in the premises shall be perjury, and shall be punished as such.

Penalty.

SEC. 10. Any saving bank, or bank, or bank incorporation, failing to furnish to the bank commissioners the report required by this act, within the time required herein, shall forfeit the sum of one hundred dollars per day during the time of such default.

Proceedings against unsafe corporations.

SEC. 11. If such commissioners, on examination of the affairs of any corporation mentioned in this act, shall find that any of said corporations or persons have been guilty of violating its charter or law, or is conducting business in an unsafe manner, they shall, by an order addressed to the corporation so offend-

ing, direct discontinuance of such illegal and unsafe practices and a conformity with the requirements of its charter and of law, and with safety and security in its transactions; and if any of said corporations or persons shall refuse or neglect to comply with such order, or whenever it shall appear to these commissioners that it is unsafe for any of the said corporations to continue to transact business, they shall communicate with the attorney-general, who shall immediately commence suit in the proper court against such corporation to enjoin and prohibit it from transacting any further business; and upon the hearing of the case, if the judge of the court where the case is tried shall be of the opinion that it is unsafe for the parties interested for such corporation or person to continue to transact business, and that such corporation or person is insolvent, he shall issue the injunction applied for by the said commissioners, who shall cause said injunction to be served according to law; and he shall further direct said commissioners to take such proceedings against such corporation or person as may be decided upon by its creditors.

Salary of commissioners.

SEC. 12. The bank commissioners shall each receive a salary of three thousand dollars, and necessary traveling expenses, not to exceed five hundred dollars for each commissioner per year, to be audited by the state controller and paid by the state treasurer in the same manner as the salaries of other state officers.

Report required.

SEC. 13. The bank commissioners shall make a general report of the business of their office to the legislature, at each session, during the first week of the session.

Commissioners to appoint clerk—Office hours of.

SEC. 14. The bank commissioners shall have power to appoint a clerk, at a salary of one hundred and fifty dollars per month. The said commissioners shall keep their office open for business from nine o'clock A. M. until three o'clock P. M., every day except non-judicial days. They shall procure rooms necessary for their office, at a rent not to exceed seventy-five dollars per month, and may provide a safe and necessary furniture therefor, at an expense not exceeding five hundred dollars. They may also provide stationery, fuel, and other conveniences necessary for the transaction of duties, not exceeding in the aggregate the sum of two hundred dollars per annum. All expenditures authorized in this section shall be audited and paid in the same manner as the salary of the commissioners.

Semi-annual report.

SEC. 15. The semi-annual reports provided for by this act shall be filed and kept on file by the bank commissioners, in their office, and shall be open to the inspection of the public during their office hours.

Assessments against banks.

SEC. 16. To meet the annual expenses provided for by this act, the bank commissioners shall receive in advance, in gold coin, from each savings bank, or bank, or banking corporation applying for a license, its pro rata amount of the salaries, and all other necessary expenses of the commissioners, such amount to be raised by an assessment on the amount of deposits of such bank. But in estimating the amount to be paid by each savings bank, bank, or banking corporation, on applying for its first license under this act, the amount as shown by its last semi-annual statement, published for the information of its deposi-

tors, shall be taken as the amount on deposit with it. They shall receive, for furnishing copies of papers, statements, and reports filed in their office, twenty cents per folio of one hundred words, and for certifying copies, one dollar, to be paid for by the parties applying for the same. They shall pay to the state treasurer every month, all such amounts received by them under the provisions of this act, to be paid into the general fund of the state. The commissioners may recover the amounts assessed against said banks in the name of the people, and must pay the same to the state treasurer as aforesaid.

Commissioners to keep books.

SEC. 17. The bank commissioners shall keep proper books of record of all acts, matters, and things done by them under the provisions of this act, which shall be open to the inspection of the public during their office hours.

Subpœnas to be issued.

SEC. 18. The bank commissioners may issue subpœnas for witnesses to attend and testify before them, on any examination by this act authorized, which must be served, obeyed, and enforced as provided in the Code of Civil Procedure for civil cases; the commissioners to issue attachments, and impose the penalty for disobedience, and the witnesses may be punished as provided in the Penal Code.

Commissioners to receive money.

SEC. 19. The bank commissioners may sue for and recover, in the name of the people, in any court of competent jurisdiction, all sums of money which become due, payable, or forfeited by any of the provisions of this act.

Commissioners to deliver property.

SEC. 20. The commissioners shall, upon the expiration of their term of office, deliver to their successors, or if there be none, then to the controller of state, all property, books, reports, and papers of every description pertaining to their office.

SEC. 21. All acts are hereby repealed in so far as they are inconsistent with the provisions of this act.

SEC. 22. This act shall take effect and be in force from and after the fifteenth of May, A. D. eighteen hundred and seventy-eight.

BEE-CULTURE.

An Act to authorize the boards of supervisors of the several counties of this state to appoint inspectors of apiaries, and provide for their compensation, and defining their duties, and for the further protection of bee-culture.

[Approved March 13, 1883; 1883, 285.]

Inspectors to be appointed.

SECTION 1. The board of supervisors of any county wherein bees are kept are hereby authorized to appoint one or more persons as inspectors of apiaries, to hold office during the pleasure of said board.

Compensation.

SEC. 2. The board of supervisors shall fix and determine the compensation of the inspectors of apiaries, to be paid out of the funds of the county not otherwise appropriated.

"Foul brood."

SEC. 3. Upon complaint being made to the inspector, to the effect that, in complainant's opinion, the disease known as "foul brood" exists in any apiary

in that county, it shall be the duty of such inspector to inspect such apiary as soon as practicable, and direct the person in charge thereof to destroy all hives ascertained to be so affected, together with the combs and bees therein, by burning, or burying the same in the ground the following night.

Owner must destroy.

SEC. 4. If the owner or person in charge of an apiary, by his own inspection or through any other source, discovers foul brood in any hive in said apiary, it shall be his duty to destroy such hive and contents in the manner provided in section three of this act.

Penalty.

SEC. 5. Any person failing to comply with the provisions of the last section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five dollars nor more than twenty-five dollars for the first offense, and by a fine of not more than fifty dollars for each subsequent offense.

SEC. 6. This act shall take effect from and after its passage.

BLIND.

See HOME OF ADULT BLIND.

BUTTE COUNTY.

References to special and local acts.—Boundaries, 1850, 62; 1851, 177; 1853, 53; 1854, 8; 1856, 118, 124, 222; 1857, 25, 109; 1859, 359; 1860, 115; 1861, 167.

Seat of justice, 1850, 62; 1851, 177; 1853, 53; 1856, 37; 1857, 120.

Organizing Plumas county, 1854, 8.

Giving jurisdiction to courts in Plumas county in certain cases, 1854, 232.

Fixing times of holding county court, court of sessions, and probate court, 1855, 8; 1858, 46;

Changing and fixing county seat, 1856, 37.

Creating Tehama county, 1856, 118, 222; 1857, 25, 108; 1859, 359; 1863, 492.

Altering and defining boundary lines of Colusa county, 1856, 124.

Separating office of collector of taxes from office of sheriff, 1857, 61.

Incorporating town of Oroville, 1857, 77; 1858, 220; 1859, 32.

Providing for indigent sick, 1857, 72.

To locate county seat, 1857, 120.

Separating office of county recorder from office of county clerk, 1857, 127.

Fixing compensation of supervisors, 1857, 239; 1858, 109.

Providing for construction of wagon-road from Oroville to proposed National wagon-road, etc., 1857, 291.

Extending time for collection of taxes for 1857, 1858, 62.

Authorizing and empowering county recorder to make certified copies of certain records, etc., 1858, 108.

Fixing compensation of clerk of board of supervisors, 1858, 109.

Allowing L. Carson to sell certain real estate (as guardian of John S. Williams, jun., an infant), 1858, 210; 1859, 306.

Authorizing board of supervisors to issue bonds, etc., not exceeding two hundred and thirty thousand dollars, to be expended in constructing railroads and wagon-roads, etc., 1858, 242.

Legalizing assessment of real and personal property made during 1856 and 1857 by J. H. Lillard, 1859, 28.

Authorizing M. Massett to remove remains of deceased persons, 1859, 59.

Authorizing and empowering board of supervisors to levy special tax for contingent purposes, 1859, 108; 1862, 36.

Authorizing and empowering county clerk to transcribe certain records, and legalizing same, 1859, 119.

Authorizing recorder of Tehama county to transcribe certain records, 1859, 151.

Providing for settling the boundary line between Butte and Yuba counties, 1859, 225.

Legalizing and confirming election of county surveyor, 1859, 256.

Exempting estate of Charles Evans, deceased, from process of administration, 1859, 305.

Fixing commencement of terms of office, 1859, 337.

Authorizing coroner to remove bodies of deceased persons, 1859, 358.

Extending time for collection of taxes for 1859, 1860, 8.

Authorizing guardian of J. K. P. Potter, minor heir of John Potter, deceased, to sell certain real estate, 1860, 50.

Authorizing administrator of estate of F. P. Bohem, deceased, to sell certain real estate, 1860, 51.

Authorizing Butte county to purchase and hold two hundred thousand dollars of first-mortgage bonds of California Northern Railroad Company, and to issue bonds, etc., 1860, 90, 133.

Defining locality of village of Strawberry Valley, 1860, 115.

Concerning roads and highways, 1860, 117; 1861, 398.

Authorizing and empowering guardian of Frank S. Eckert to convey certain lands, 1860, 127.
Concerning collection of revenue, 1860, 279.
Extending time for collection of taxes, 1861, 18.
Authorizing probate court to affirm certain sale of real estate by administrator of J. P. Bowen, deceased, 1861, 72.
Providing for collection of delinquent taxes, 1861, 92.
Granting right of way to construct toll-bridge across Feather river, near Oroville, to H. B. Lathrop and others, 1861, 97.
In relation to compensation of county auditor, 1861, 155.
Changing boundary line between Butte and Yuba counties at Woodville house, 1861, 167.
Authorizing P. Ord to sell certain real estate of his infant children, 1861, 186.
Authorizing board of trustees of Oroville cemetery to give purchasers of lots proper certificates of purchase, and to manage cemetery, 1861, 225.
Prescribing duties and providing for compensation of county officers, 1861, 287; 1862, 224; 1863–4, 184.
Authorizing removal of human remains by D. C. Downer and others, 1862, 166.
In relation to board of supervisors, and concerning their powers, 1862, 236, 537; 1863, 328.
Appropriating certain funds (out of contingent fund to salary fund), 1862, 311.
Concerning office of county assessor, 1863, 24.
Authorizing Butte county to purchase and hold sixty-six thousand dollars of first-mortgage bonds of California Northern Railroad Company, and to issue bonds, etc., 1863, 237.
Authorizing J. Bidwell and others to construct wagon-road, 1863, 291; 1863–4, 185.
Authorizing board of supervisors to appropriate certain moneys, 1863, 346.
Authorizing board of supervisors to loan certain money, 1863, 373.
Granting right to construct toll-bridge across Feather river near Orovlle, to J. M. Clark and others, 1863, 491; 1863–4, 157.
Granting to Bidwell Bridge Company right to keep and maintain present bridge across Feather river at Bidwell as toll-bridge, and to reconstruct same, 1863, 558.
Providing for opening and grading Huntoon street, in Oroville, from railroad depot to Safford street, 1863–4, 56.
In relation to board of supervisors, defining their powers and duties, etc., and to reduce public expenses and taxation, 1863–4, 328; 1865–6, 207.
Authorizing board of supervisors to loan certain money (to Oroville and Woodville Turnpike Company), 1863–4, 533.
Roads and highways in, 1865–6, 51, 661.
Exempted from act concerning canal companies, 1865–6, 53, 604.
Food and supplies for county jail and infirmary, 1865–6, 131.
County warrants, redemption of, 1865–6, 208.
Payment of per diem to road overseers, 1865–6, 218.
Levy of school tax in Chico district, 1865–6, 222.
Construction and repair of roads, 1865–6, 228, 661.
Collection of delinquent taxes, 1865–6, 271.
Construction of wagon-road from Cold Spring house to Greenville, 1865–6, 285, 661.
Exemption from act concerning trespassing of animals, 1865–6, 311.
To prevent stallions from running at large, 1865–6, 327.
Sale of railroad bonds, 1865–6, 338; 1867–8, 70.
Public and private roads in, 1865–6, 381.
District collectors and assessors in, 1865–6, 418.
Collection of licenses and taxes, 1865–6, 419, 604.
Tax for support of common schools, 1865–6, 431.
To prevent trespassing of sheep, 1865–6, 436.
Wagon-road from Oroville to Beckwourth's pass, 1865–6, 491.
Duties and compensation of officers, 1865–6, 603.
Plumas county organized from part of, 1865–6, 605.
Toll-bridge across Feather river, 1865–6, 692.
Salary of county assessor, 1865–6, 858.
For the relief of A. H. Willard and J. B. Hartsough, 1865–6, 675.
To legalize assessment roll, 1867–8, 73.
District collectors and assessors, 1867–8, 120.
Act concerning jurors, 1867–8, 39.
To levy tax in Oroville school district, 1867–8, 142.
Public and private roads, 1867–8, 158; 1869–70, 231.
Powers and duties of supervisors, 1867–8, 292.
For relief of school fund, 1867–8, 298.
Compensation of officers, 1867–8, 348.
To provide for floating debt, 1867–8, 429.
Fees and salaries, 1867–8, 448; 1869–70, 148.
Ferries and toll-bridges, 1869–70, 24.
To transfer funds to common-school fund, 1869–70, 106.
Supervisors to direct issuance of warrant to W. S. Reese, 1869–70, 376.
Duties of certain officers, 1869–70, 401.
Terms of district court, 1869–70, 576.
Franchise to J. Bidwell and others for wagon-road, 1869–70, 621.
To authorize guardian of minor heirs to sell real estate, 1869–70, 622.
Incorporating town of Chico, 1871–2, 11, 248; 1873–4, 213; 1875–6, 22.
Additional notaries public, 1871–2, 36.
To protect fish in Butte creek, 1871–2, 138.
Fees of witnesses and jurors, 1871–2, 233; 1873–4, 508.
Salary of assessor, 1871–2, 270.
Concerning roads, 1871–2, 322, 693.
To prohibit hunting and shooting, 1871–2, 477.
To prevent hogs running at large, 1871–2, 510.
Salary of district attorney, 1871–2, 653.
Defining lawful and partition fences, 1871–2, 700.
Salary of treasurer and auditor, 1871–2, 709.
In third congressional district, 1871–2, 714.
To authorize administratrix of Thomas McDanel to borrow money, 1871–2, 795.
Fees of district attorney, 1871–2, 799.
Redemption of outstanding bonds, 1873–4, 28.
To protect fish in Butte creek, 1873–4, 87.
Salary of superintendent of public school, 1873–4, 170.
To protect agriculture, 1873–4, 310; 1875–6, 314.

In twenty-sixth senatorial district, 1873–4, 369.

Concerning roads, 1873–4, 503.

Salaries of certain officers, 1873–4, 733; 1875–6, 753, 906.

Authorizing Chico school district to issue bonds, 1873–4, 735; 1875–6, 59.

Leave of absence to surveyor, 1873–4, 869.

Authorizing treasurer to transfer certain funds, 1875–6, 355.

To call in and pay registered warrants, 1875–6, 355.

For better protection of county treasury, 1875–6, 365.

Providing for payment of debt due on road fund, 1875–6, 492.

For redemption of outstanding railroad bonds, 1875–6, 501.

In relation to roads and highways, 1875–6, 752.

Amending act of April 3, 1876, relating to roads and highways, 1877–8, 18.

Amending act of March 27, 1876, relating to debt due upon road fund, 1877–8, 34.

Authorizing Dockery school district to repay certain moneys, 1877–8, 50.

Relating to salaries of sheriff and district attorney, 1877–8, 248.

Making sheriff license collector, 1877–8, 287.

For payment of interest upon certain warrants, 1877–8, 323.

Authorizing Dockery school district to issue bonds, 1877–8, 347.

In relation to roads and highways, 1877–8, 402.

Amending act incorporating town of Chico, 1877–8, 456.

Concerning fees of sheriff, 1877–8, 567.

Regulating fees of justices of the peace, 1877–8, 683.

To provide a new great register, 1877–8, 693.

To supply Oroville with water for fire purposes, 1877–8, 796.

CALAVERAS COUNTY.

References to special and local acts.—Boundaries, 1850, 63, 262; 1851, 175; 1854, 156; 1861, 235; 1863–4, 178.

Seat of justice, 1850, 63, 262; 1851, 175, 328; 1852, 177; 1854, 156; 1863, 228.

To fund and provide for payment of debt, 1852, 173; 1857, 72.

Providing for treasurer to be collector of taxes till decided who is sheriff, 1852, 176.

Authorizing surveyor to rent office, 1853, 147.

Abolishing board of supervisors, 1853, 153, 181.

Granting electors privilege to vote for or against division of county, and to organize Amador county, 1854, 156.

Changing name of Sutter, Jackson, and Drytown Water Mining Company to that of Jackson Water Company, 1854, 195.

Changing time of holding county court and court of sessions, and changing manner of summoning jury for county court, 1855, 164; same, and concerning probate court, 1857, 28; 1863, 10.

Providing for ascertainment of indebtedness of Calaveras county prior to organization of Amador county, and for payment of portion due from Amador, 1855, 165.

Authorizing board of supervisors to levy special tax for purchasing, erecting, and constructing public buildings, 1855, 188.

Authorizing board of supervisors to pay current expenses of county, 1856, 33; 1857, 152.

Fixing compensation of county judge, 1857, 76.

Fixing compensation of district attorney, 1857, 76; 1860, 9.

Authorizing board of supervisors to levy special tax to redeem county warrants, 1857, 84.

Providing for collection of delinquent taxes, and to legalize assessment, 1857, 125.

Concerning revenue, 1857, 151.

Concerning official bonds of county officers, 1859, 7.

Concerning officers and collection of poll-taxes, license taxes, and foreign miners' license taxes, 1859, 45; 1861, 485; 1862, 119; 1865–6, 814.

To fund entire indebtedness contracted prior to November 1, 1858, and provide means for payment, 1859, 66.

To remedy loss of certain certificate of Mokelumne Hill Canal and Mining Company, 1859, 155, 251.

To confirm and legalize assessment roll or tax list for 1859, and authorize collection, 1860, 40; 1861, 81.

Authorizing administrator of John Andrews, deceased, to sell real and personal estate, 1860, 137.

Providing for maintenance of indigent sick, 1860, 228.

Abolishing office of county assessor, and establishing office of township assessor, 1860, 296; 1862, 326.

Fixing time of holding court of sessions, county court, and probate court, and manner of summoning jurors for county court, 1861, 57.

Providing for collection of delinquent taxes 1861, 79.

Separating offices of county auditor and county recorder from office of county clerk, 1861, 151.

Authorizing board of supervisors to levy special tax, and providing for building a bridge, 1861, 157; 1862, 167.

Granting right to construct turnpike road between Mokelumne Hill and Golden Gate ranch on Stockton road, 1861, 313.

To fund indebtedness contracted prior to March 18, 1857, and certain indebtedness of eight thousand dollars contracted subsequently, and provide means for payment, 1861, 364.

Regulating fees of certain officers, 1861, 579; 1862, 436; 1863, 261, 710.

Granting right to construct bridge across Mokelumne river at Middle bar, 1862, 16.

Granting Stanislaus Bridge and Ferry Company right to construct and maintain bridge or bridges across Stanislaus river, 1862, 19.

Authorizing board of supervisors to issue bonds not exceeding six thousand dollars, and dispose of same for road purposes, 1862, 39.

Granting right to construct bridge across Mokelumne river at Big bar, and to construct and maintain road from Mokelumne Hill to Butte, in Amador county, 1862, 76.

Granting right to construct turnpike between Big Tree grove and eastern boundary of state. 1862, 105; 1863–4, 160.

Authorizing board of supervisors to employ competent persons to examine records and ascertain present existing debts, etc., 1862, 215; 1863, 60.
In relation to public roads and road funds, 1862, 187; 1863, 178.
Creating and organizing fire department for Mokelumne Hill, 1862, 335.
Legalizing assessments, 1863, 10.
Submitting question of removal of county seat to qualified voters, 1863, 228.
Granting right to build turnpike at point on Big Tree road to Silver Mountain and thence to eastern line of state, 1863, 230.
To fund indebtedness, 1863, 370; 1863–4, 401.
Making certain offices salaried offices, 1863, 451; 1863–4, 218, 428.
Granting J. McNealy and associates right to construct and maintain toll-bridge across Mokelumne river, 1863, 485.
Providing for uniting offices of county clerk and county auditor, 1863, 493.
Authorizing board of supervisors to take and subscribe twenty-five thousand dollars to capital stock of Big Tree Turnpike Company, etc., 1863, 657.
Authorizing board of supervisors to take and subscribe fifty thousand dollars to capital stock of Stockton and Copperopolis Railroad Company, etc., 1863, 673.
Creating Alpine county, 1853–4, 178.
Authorizing board of supervisors to take and subscribe fifty thousand dollars to stock of Big Tree and Carson Valley Turnpike Company, etc., 1863–4, 204, 314; 1865–6, 454.
Providing for survey of boundary line between Calaveras and San Joaquin counties, 1863–4, 262.
Fixing time for holding county court and probate court, 1863–4, 421.
Authorizing board of supervisors to take and subscribe twenty thousand dollars to stock of Campo Seco and Mokelumne Hill Turnpike Road Company, etc., 1863–4, 454.
Granting right to construct turnpike from Campo Seco to Mokelumne Hill, thence to Big Tree road near the Big Meadows, 1863–4, 535; 1865–6, 120.
To authorize a turnpike from Sonora to Copperopolis, 1865–6, 99; 1867–8, 98.
Exempted from act incorporating canal companies, 1865–6, 53, 604.
To fund indebtedness of, 1865–6, 118, 472.
Sheriffs' assistants and salaries, 1865–6, 120.
To prevent stallions from running at large, 1865–6, 327; 1867–8, 70.
To provide for payment of debt due by Amador county, 1865–6, 471.
Powers of night-watchmen in towns of, 1855–6, 583.
To subscribe to Stockton and Copperopolis Railroad Company, 1865–6, 759.
Exempted from act concerning canal companies, 1865–6, 604; 1867–8, 134.
In relation to district attorney, 1865–6, 805.
Leave of absence to district attorney, 1865–6, 888.
Salary of school superintendent, 1867–8, 297.
To fund indebtedness, 1867–8, 301.
Compensation of jurors, 1867–8, 311.
Fire department in Mokelumne Hill, 1867–8, 330.
To create redemption fund, 1867–8, 420.
Fees and salaries, 1867–8, 448; 1869–70, 133, 148.
To provide for payment of salaries, 1869–70, 219.
Concerning officers and tax collectors, 1867–8, 480.
Legal distances defined, 1867–8, 563.
Public roads in, 1867–8, 633.
Tax for road purposes, 1867–8, 638.
Taxes on migratory bands of stock, 1867–8, 709.
To provide payment of salary of treasurer, 1869–70, 139.
Tax to pay salaries of officers, 1869–70, 219.
Herding of sheep, 1869–70, 304.
Concerning hogs running at large, 1869–70, 305.
Mokelumne Hill fire department act, 1867–8, 330.
Location, construction, and maintenance of public roads, 1871–2, 160.
To regulate fees and salaries, 1871–2, 177, 178, 385, 910; 1873–4, 13.
Defining fire limits in Mokelumne Hill, 1871–2, 625, 626.
Salary of district attorney, 1871–2, 654.
Payment of debt from Amador county, 1871–2, 698.
In second congressional district, 1871–2, 714.
For redemption of bonded indebtedness, 1871–2, 716.
As to taking effect of portions of codes, 1871–2, 845.
As to herding of sheep, 1871–2, 890.
For relief of B. K. Thorn, sheriff, 1873–4, 152.
To repeal special road law, 1873–4, 358.
In seventeenth senatorial district, 1873–4, 368.
To protect treasury, 1873–4, 393.
To enforce collection of poll-taxes, 1873–4, 494.
To protect agriculture, 1873–4, 579; 1875–6, 901.
To be credited with amount of old balance, 1873–4, 802.
Fixing bond of treasurer, 1875–6, 17.
Regulating certain township offices, 1875–6, 78.
Fixing terms of county and probate courts, 1875–6, 148.
Concerning offices of supervisor and district attorney, 1875–6, 141.
For collection of road poll-taxes, 1875–6, 354.
To regulate recording of mining locations, 1875–6, 853.
Amending act of March 20, 1874, relating to collection of poll-taxes, 1877–8, 35.
Fixing salary of superintendent of public schools, 1877–8, 204.
Regulating fees of constables, 1877–8, 592.

CHINESE.

An act to ascertain and express the will of the people of the state of California upon the subject of Chinese immigration. Approved December 21, 1877; 1877–8, 3. This act provided for a vote by the people of the state, at the next general or special state election, expressive of their will as to the continuance or prohibition of Chinese immigration, and re-

quired the governor to make out a memorial, setting forth the question submitted and the result, and send copies thereof to the president, vice-president, each cabinet minister, senator, and representative at Washington, and the governor of each state and territory.

An act to protect public health from infection caused by exhumation and removal of the remains of deceased persons, approved April 1, 1878; 1877–8, 1050. This act seems to have been intended principally as a blow at the Chinese, who were accustomed to remove the bones of their dead to China. It is, however, general in its application. The act will be found given in full: Penal Code, sec. 297.

In addition to the foregoing acts, the legislature of 1877–8 adopted four anti-Chinese resolutions. The first was a request of our senators and representatives to secure the speedy passage of a bill to restrict Chinese immigration by levying a per capita tax of two hundred and fifty dollars upon each immigrant, adopted December 11, 1877; 1877–8, 1056. The second was a request for a modification of all treaties so that such immigration might not be permitted, adopted December 21, 1877; 1877–8, 1058. The third was a request that no further subsidies should be granted to any steamship company running vessels between California and China, adopted February 2, 1878; 1877–8, 1062. And the fourth was a further request for a change in existing treaties so as to stop the immigration of Chinese to the United States, adopted February 9, 1878; 1877–8, 1063.

An act to amend the Penal Code by adding two new sections thereto, to be known as sections 178 and 179, prohibiting the employment of Chinese by corporations, approved February 13, 1880; Amendments 1880, 1 (Ban. ed. 6). This act will be found inserted in its place in the Penal Code, sec. 178.

An act to promote emigration from the state of California, approved March 26, 1880; 1880, 15 (Ban. ed. 50). This act, which seems to have been principally intended to prevent Chinese companies from restraining the return to China of persons indebted to them, will be found given in full under the head of "Emigration," *post*.

An Act to provide for the removal of Chinese, whose presence is dangerous to the well-being of communities, outside the limits of cities and towns in the state of California.

[Approved April 3, 1880; 1880, 22 (Ban. ed. 114).]

Chinese, removal of, outside of city limits.

SECTION 1. The board of trustees or other legislative authority of any incorporated city or town, and the board of supervisors of any incorporated city and county, are hereby granted the power, and it is hereby made their duty, to pass and enforce any and all acts, or ordinances, or resolutions necessary to cause the removal without the limits of such cities and towns, or city and county, of any Chinese now within or hereafter to come within such limits; provided, that they may set apart certain prescribed portions of the limits of such cities or towns, or city and county, for the location therein of such Chinese.

SEC. 2. This act shall take effect and be in force from and after its passage.

An act to prohibit the issuance of licenses to aliens not eligible to become electors of the state of California, approved April 12, 1880; 1880, 29 (Ban. ed. 192). This act, the object of which is sufficiently expressed in the title, will be found given in full: Pol. Code, sec. 3359.

An act relating to fishing in the waters of this state, approved April 23, 1880; 1880, 123 (Ban. ed. 388). This act, which applies only to aliens incapable of becoming electors, and was aimed at Chinese fisherman, will be found given in full: Penal Code, sec. 637.

The legislature of 1880 also adopted a resolution having in view a modification of the Burlingame treaty so as to prohibit further Chinese immigration: See 1880, 246 (Ban. ed. 9).

CODES.

The legislation in reference to the preparation of the codes was as follows:

An act to provide for the revision and compilation of the laws of the state of California, and the publication thereof, approved March 28, 1868; 1867–8, 435.

An act establishing a commission for the revision of the laws, approved April 4, 1870; 1869–70, 774.

An act in relation to the revision of the laws (appointing an advisory committee), approved January 10, 1872; 1871–2, 18.

An act in relation to the revision of the laws (providing for the payment of three gentlemen, learned in the law, who had examined and prepared many amendments to the codes), approved March 23, 1874; 1873–4, 516.

After the codes had been prepared and passed, with provisions inserted that they were to take effect at twelve o'clock on January 1, 1873, it was deemed advisable to put various portions of them into effect previous to that time. The several acts passed for this purpose are deemed important as virtually parts of the codes, and are here given as follows:

An Act to put into immediate effect certain parts of the Political and Penal codes.

[Approved March 16, 1872; 1871-2, 382.]

Portions of Political Code put in effect.

SECTION 1. The whole of Title IX. (nine) of Part III. (three) and of Chapter XV (fifteen) of Title VII. (seven) of Part III. (three) of the Political Code of the state of California, approved March twelfth, eighteen hundred and seventy-two, shall be in force and effect from and after the passage of this act. [See Pol. Code, secs. 3607 et seq., and 3356 et seq.]

Sections of Penal Code put in effect.

SEC. 2. Sections seventeen, eighteen, nineteen, one hundred and seventy-six, four hundred and twenty-four, four hundred and twenty-five, four hundred and twenty-six, four hundred and twenty-seven, four hundred and twenty-eight, four hundred and twenty-nine, four hundred and thirty, four hundred and thirty-one, four hundred and thirty-two, four hundred and thirty-three, four hundred and thirty-four, four hundred and thirty-five, four hundred and thirty-six, four hundred and thirty-nine, and four hundred and forty of the Penal Code of California, approved February fourteenth, eighteen hundred and seventy-two, shall be in force and effect from and after the passage of this act.

Construction.

SEC. 3. Every provision of the Political Code and of the Penal Code which explains, defines, construes, or gives force and effect to the provisions of the title, chapter, or sections above referred to, shall, so far as may be required to carry into force and effect such provisions, to that extent be in force and effect from and after the passage of this act.

SEC. 4. The title, chapter, and sections in section one and two of this act referred to must be read, construed, and enforced in the same manner and with like effect as they would be if every part of the Political Code and Penal Code Code took effect at the date of the passage of this act.

Void assessments.

SEC. 5. All assessments made upon property before the passage of this act, and since the first day of January, eighteen hundred and seventy-two, are void.

Board of equalization.

SEC. 6. The state board of equalization must at once assemble and remain in session until the first day of April, eighteen hundred and seventy-two, and must at once, by mail, express, or telegraph, notify the assessors of the several counties of the passage of this act.

Primary evidence.

SEC. 7. The phrase "primary evidence," as used in the Political Code, means that evidence which suffices for the proof of a particular fact until contradicted and overcome by other evidence.

Revision commission.

SEC. 8. The revision commission are directed to prepare for publication the provisions of the codes referred to in this act, and to have twelve hundred copies published in pamphlet form.

SEC. 9. As soon as the copies are published, the chairman of the revision commission must certify to their correctness and deliver them to the state board of equalization for circulation.

County treasurers and auditors.

SEC. 10. The county treasurers and auditors of the various counties must at once perform the duties prescribed in sections thirty-eight hundred and forty-one, thirty-eight hundred and forty-three, and thirty-eight hundred and forty-four of the Political Code.

SEC. 11. This act shall be in force and effect from and after its passage.

An Act to put into effect certain parts of the codes, and provide for their publication.

[Approved March 22, 1872; 1871-2, 481.]

Parts of codes put into effect.

SECTION 1. The whole of Chapters I., II., and VII., and all of Chapter III., except Articles XIII., XVI., and XIX., of Title I., Part III.; the whole of Title II., Part III.; the whole of Title I., Part IV., and sections seven hundred and fifty-one, seven hundred and fifty-two, seven hundred and fifty-three, seven hundred and fifty-four, seven hundred and fifty-five, and seven hundred and fifty-six of the Political Code of the state of California, approved March twelfth, eighteen hundred and seventy-two—shall be in force and effect from and after twelve o'clock noon of the first day of May, eighteen hundred and seventy-two.

Same.

SEC. 2. The whole of Titles IV., V., and VI. of Part I., and sections one hundred and thirteen, one hundred and fourteen, and one hundred and fifteen of the Penal Code of California, approved February fourteenth, eighteen hundred and seventy-two, shall be in force and effect from and after twelve o'clock noon of the first day of May, eighteen hundred and seventy-two.

Same.

SEC. 3. Every provision of the Political Code and of the Penal Code which explains, defines, construes, or gives force and effect to the provisions of the titles, chapters, or sections above referred to, shall, so far as may be required to carry into force and effect such provisions to that extent, be in force and effect from and after twelve o'clock noon of the first day of May, eighteen hundred and seventy-two.

Construction.

SEC. 4. The titles, chapters, and sections in sections one and two of this act referred to must be read, construed, and enforced in the same manner and with like effect, as they would be if every part of the Political Code and Penal Code took effect at the time specified in the preceding section.

Primary evidence.

SEC. 5. The phrase "primary evidence," as used in the Political and Penal codes, means that evidence which suffices for the proof of a particular fact, until contradicted and overcome by other evidence.

County clerk.

SEC. 6. In addition to the duties prescribed by section eleven hundred and thirteen of the Political Code, each county clerk must, before the fifth day of October, eighteen hundred and seventy-two, make out a copy of the uncanceled entries existing on the great register of his county on the first day of October, eighteen hundred and seventy-two.

Publication.

SEC. 7. The copy so made out must be published and distributed as provided in sections eleven hundred and fourteen, eleven hundred and fifteen, and eleven

hundred and sixteen of the Political Code, and shall in all respects have like force and effect as will the copy made as provided in section eleven hundred and thirteen of such code.

Supervisors to allow additional deputy assessors.

SEC. 8. The board of supervisors of each county in this state must meet at the county seat thereof on or before the second Monday in April, eighteen hundred and seventy-two, and allow the assessor thereof such a number of deputies, to be appointed by him in addition to the number now fixed, or where no deputies are now allowed, so many deputies as will, in the judgment of the board, enable the assessor to complete the assessment within the time prescribed by law.

Allowance.

SEC. 9. The board of supervisors must thereafter, at their last regular meeting held prior to the first Monday in March of each year, make the allowance for the year as above provided for.

Compensation.

SEC. 10. The board must fix the compensation of the deputies, and such compensation must be paid out of the county treasury. The compensation must not exceed five dollars per day for each deputy for the time actually engaged, nor must any allowance be made but for work done between the first Monday in March and the first Monday in July of each year.

Assessors and auditors.

SEC. 11. The board of supervisors of each county must make to the assessor and auditor thereof a reasonable allowance, not to exceed eight cents per folio, for making the statements required by sections thirty-six hundred and fifty-five and thirty-seven hundred and twenty-eight of the Political Code.

Certain counties were exempted from the operation of the four preceding sections. See *post*, the following act.

State board of equalization.

SEC. 12. The state board of equalization may, by an order entered upon its minutes, and certified to the county auditor of any county in the state, dispense with the duplicate assessment-book in such county, in which event the original assessment-book shall perform all the offices of such duplicate and shall have like force and effect.

Revision commission.

SEC. 13. The revision commission must:

1. Compile for publication all general statutes continued in force by either of the codes;

2. Incorporate in the codes, in form of notes, under the appropriate sections, all statutes or parts of statutes passed at the present session of the legislature altering or affecting any provision of either of the codes;

3. Head-note the federal and state constitutions and the laws of the United States relating to naturalization and the authentication of writings, and insert them in the proper code;

4. Prepare alphabetical indexes for the codes and volumes of statutes continued in force;

5. Furnish the state printer with full copies of all the matters specified in the preceding subdivisions and with copies of such code[s], all fully arranged for publication;

6. Prescribe the style of printing and binding, and give to each and the publication of the works their personal supervision;

7. Read all proofs and see that the printed copies agree with the originals;

8. As their work progresses, notice any conflicts or incongruities, and prepare a bill to obviate the same;

9. Incorporate in such bill anything in their opinion necessary to give completeness to the code;

10. Present such bill to the governor before the first day of November, A. D. eighteen hundred and seventy-two.

Printing and binding.

SEC. 14. The state printer must, under the direction of the commissioners, print and bind two thousand copies of each volume of the codes, and one thousand copies of the volume containing the statutes continued in force.

SEC. 15. The style of printing, the paper, and the binding must be such as the commissioners prescribe.

SEC. 16. The printer must, under the direction of the commission, include within one volume the federal and state constitutions, the laws of the United States relative to naturalization and the authentication of writings, and a list of the members of this legislature.

Delivery of volumes of codes.

SEC. 17. As soon as the whole edition is printed and bound, the printer must deliver it to the secretary of state.

Distribution.

SEC. 18. Of the edition of the codes and of the volume containing the statutes continued, the secretary must make distribution of as many copies and in like manner as the reports of the supreme court of the state are by him distributed; and must also distribute to each member of the present legislature two copies of the codes and two copies of the volume containing the statutes continued in force, and to each member of the revision commission and advisory committee ten copies of each.

Prices.

SEC. 19. The secretary of state must keep the remainder of the edition on hand for sale at the following prices, in gold coin:

1. Each volume of the codes, at two dollars and fifty cents;

2. Each volume of "statutes continued in force," at two dollars and fifty cents.

Secretary of state.

SEC. 20. He is responsible to the state for the whole of the edition not distributed under the provisions of section eighteen, and must at the end of each month make to the controller a statement, under oath, showing:

1. The number of volumes on hand at the end of the preceding month;

2. The number on hand at the time of the statement.

Controller.

SEC. 21. The controller must at once charge him with the difference at the prices fixed by section nineteen, and the secretary of state must at once pay the amount into the state treasury to the credit of the general fund.

Compiling by commission.

SEC. 22. The revision commission must, within thirty days after the passage of this act, compile and have printed in pamphlet form, by the state printer,

twelve hundred copies of the laws put into effect by this act; and must distribute such pamphlets in the same manner as the secretary of state is required to distribute the session laws. Nothing in this act, nor in an act entitled "An act to put into immediate effect certain parts of the Political and Penal codes," approved March sixteenth, eighteen hundred and seventy-two, shall be construed to affect or repeal any of the acts relative to stamp duties prior to the first day of January, eighteen hundred and seventy-three.

Act continued.

SEC. 23. For the purpose of editing and superintending the publication of the codes passed at the present session of the legislature, and discharging the duties cast by this act, the commission existing under "An act establishing a commission for the revision of laws," approved April fourth, eighteen hundred and seventy, and the act itself is continued until the first day of November, eighteen hundred and seventy-two, but then said law and the commission shall cease.

Vacancy.

SEC. 24. If it becomes apparent to the governor at any time after the passage of this act that the commission will be unable to complete the work within the time prescribed, he must appoint some suitable person to fill the vacancy in said commission caused by the resignation of Charles Lindley.

No extra compensation.

SEC. 25. The revision commission shall not charge or receive any extra compensation for copy made or furnished to the printer.

Delivery of bills.

SEC. 26. Upon demand, the secretary of state must deliver to the commission the bills enacting such codes.

Not to be removed.

SEC. 27. After such delivery the bills must not be taken from the capitol building, but must at all times until they are returned be in the actual charge of one or more of the commissioners, and must by them at the close of each day's labor be placed in one of the fire-proof vaults within the building.

SEC. 28. On the first day of November, eighteen hundred and seventy-two, the commission must return the bills to the secretary of state.

SEC. 29. This act shall be in force from and after its passage.

An Act to exempt certain counties from certain sections of the foregoing act of March 22, 1872.

[Approved April 1, 1872; 1881-2, 845.]

The codes.

SECTION 1. The following counties, to wit: Amador, Alpine, Calaveras, El Dorado, Humboldt, Los Angeles, San Diego, San Bernardino, Sonoma, Siskiyou, and Trinity, are hereby excepted from the operation of sections eight, nine, ten, and eleven of an act entitled "An act to put into effect certain parts of the codes, and provide for their publication," approved March twenty-second, eighteen hundred and seventy-two; provided, that in Trinity county so much of section eleven as relates to the auditor shall remain in force.

SEC. 2. All acts and parts of acts, so far as they conflict with this act, are hereby repealed.

SEC. 3. This act shall go into effect immediately.

An Act to add additional sections to the Political Code.

[Approved March 27, 1872; 1871-2, 586.]

Sections 1 and 2 consist of the enactment of sections 3663 and 3830, added to the Political Code and therein inserted.

SEC. 3. This act and sections thirty-six hundred and sixty-three and thirty-eight hundred and thirty of the Political Code as above enacted shall be in force from and after the passage of this act.

An Act to put into effect the provisions of the Civil Code relative to water rights.

[Approved March 27, 1872; 1871-2, 622.]

Parts of Civil Code put in effect—Printed copies.

SECTION 1. Title VIII. (eight) of Part IV. (four) of Division Second of the Civil Code of the state of California shall be in full force and effect from and after the first day of May, eighteen hundred and seventy-two.

SEC. 2. The revision commission are hereby authorized to cause to be printed and certified by their chairman twelve hundred copies of Title VIII. (eight), in pamphlet form, and to distribute them to the members of the legislature and county officers of the several counties.

SEC. 3. This act shall be in force and effect from and after its passage.

An Act in relation to the Political Code.

[Approved March 28, 1872; 1871-2, 653.]

Section 1 consists of the amendment of section 4330 of the Political Code therein inserted.

SEC. 2. With relation to the acts passed at the present session of the legislature, section forty-three hundred and thirty of the Political Code must be construed as though it had been passed on the last day of the present session.

SEC. 3. This act and section forty-three hundred and thirty of the Political Code as herein amended shall be in force and effect from and after the passage of this act.

An Act to put into effect certain parts of the Political Code.

[Approved April 1, 1872; 1871-2, 825.]

SECTION 1. Article II. of Chapter VI. of Title I. of Part III. of the Political Code shall take effect from and after the passage of this act.

SEC. 2. This act shall be in force from and after its passage.

An Act to amend section thirty-seven hundred and thirteen of the Political Code of the state of California.

[Approved April 1, 1872; 1871-2, 886.]

Section 1 consisted of the enactment of an amendment to section 3713 of the Political Code. It has since been superseded by a subsequent amendment of the same section, which will be found in its place in the code.

SEC. 2. This act and the section of the Political Code herein amended shall be in force and effect from and after the passage of this act.

An Act to amend and in relation to the Political, Civil, and Penal codes, and Code of Civil Procedure.

[Approved April 1, 1872.]

This act is not printed either in the statutes, codes, or amendments. Certain portions of it are to be found only in the pamphlet called "Parts of the codes that take effect prior to January 1, 1873," the publication of which is provided for by the foregoing act of March 16, 1872, and by section 62 of the present act. All of the act so printed is given as follows:

Sections 1 to 36 consist of enactments of amendments to the codes inserted in their proper places.

SEC. 37. Sections forty-eight and forty-nine of the Code of Civil Procedure shall be in force and effect from and after the passage of this act.

Sections 38 to 61, inclusive, which are not printed in "parts of the codes" above mentioned, seem to consist of amendments to the codes therein inserted.

Publication of parts of codes that take effect prior to January 1, 1873.

SEC. 62. The revision commission must have prepared and printed in pamphlet form the various provisions of the codes which take effect prior to the first day of January, eighteen hundred and seventy-three.

Certificate of correctness and distribution.

SEC. 63. The commissioners must certify to the correctness of the pamphlet so prepared and printed, and must distribute the same to the members of the legislature, state and county officers, and to such other persons as, in their judgment, they may think proper.

Section 64 related only to mode of payment of services performed under the preceding sections.

Taking effect of portions of codes.

SEC. 65. Section twenty of the Political Code, section twenty-one of the Civil Code, section twenty-four of the Penal Code, and section nineteen of the Code of Civil Procedure are hereby declared to have been in full force and effect since the passage of the respective codes in which they are found, and each of such sections shall be in full force and effect from and after the passage of this act.

Part V. of Political Code.

SEC. 66. The whole of Part V. of the Political Code is declared to have been in full force and effect since the passage of the respective codes, and the whole of such Part V. shall be in full force and effect from and after the passage of this act.

Sections of this act.

SEC. 67. Every section by this act added to either of the codes shall have the same force and effect, and shall be construed in like manner, as if it had constituted part of such code at the time of its passage.

Sections 68 to 70, inclusive, which are not printed in the above-mentioned "parts of the codes," seem to consist of amendments to the codes therein inserted.

Taking effect of portions of Code of Civil Procedure.

SEC. 71. The whole of Chapter I. of Title V. of Part I., and sections two hundred and sixty-nine, two hundred and seventy, and two hundred and seventy-one, of the Code of Civil Procedure, shall take effect and be in force from and after the passage of this act.

SEC. 72. This act shall be in force and effect from and after its passage.

An Act to apply certain portions of the Political Code to the county of Fresno.

[Approved February 27, 1874; 1873–4, 178.]

Provisions of Political Code as to roads applied to Fresno county.

SECTION 1. Sections twenty-seven hundred and forty-three, twenty-seven hundred and forty-four, twenty-seven hundred and forty-five, twenty-seven hundred and forty-six, twenty-seven hundred and forty-seven, twenty-seven hundred and forty-eight, twenty-seven hundred and forty-nine, twenty-seven hundred and fifty, twenty-seven hundred and fifty-one, twenty-seven hundred and fifty-two, twenty-seven hundred and fifty-three, twenty-seven hundred and fifty-four, twenty-seven hundred and fifty-five, twenty-seven hundred and fifty-six, of Volume I., Chapter II., of Article VIII., Title VI., of the Political Code, are made applicable to the county of Fresno.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed.

An Act relative to the publication of amendments to the code.

[Approved March 30, 1874; 1873–4, 806.]

Publishing amendments to code.

SECTION 1. All statutes passed at this session of the legislature which are expressly amendatory of the codes must be published in a volume uniform in size with the codes, and separate from the other statutes.

Arrangement.

SEC. 2. The secretary of state must arrange such amendments so that all statutes amendatory of the same code will be together, and as near as possible in the order of the sections which they amend.

SEC. 3. This act shall be in force from and after its passage.

An act similar to the foregoing, in relation to the amendments of 1875–6 to the codes, was approved March 16, 1876; 1875–6, 311.

An Act supplementary to an act entitled "An act to amend the Political Code in relation to highways," approved March 30, 1874.

[Approved March 30, 1874; 1873–4, 907.]

Highways in San Mateo county.

SECTION 1. An act entitled "An act to amend the Political Code," approved March thirtieth, eighteen hundred and seventy-four, is hereby made applicable to the county of San Mateo.

SEC. 2. This act shall be in force and effect from and after its passage.

The effect of the foregoing act is to add the name of San Mateo in section 38 of the act referred to.

An Act to make the provisions of the Political Code concerning highways applicable to San Bernardino county.

[Approved February 15, 1876; 1875–6, 57.]

SECTION 1. The provisions of the Political Code concerning highways, bridges, toll-roads, public ferries, and toll-bridges are hereby made applicable to San Bernardino county, and all special acts in conflict with such provisions are hereby repealed.

SEC. 2. This act shall take effect from and after its passage.

An Act to appropriate moneys for the payment of I. S. Belcher, Thomas P. Stoney, and A. C. Freeman, for services to the state in preparing bills adapting the codes to the constitution.

[Approved March 3, 1881; 1881, 24.]

Appropriation.

SECTION 1. There is hereby appropriated out of the general fund the sum of three thousand seven hundred and fifty dollars to pay I. S. Belcher, Thomas P. Stoney, and A. C. Freeman each one thousand two hundred and fifty dollars, for two months and a half services in preparing bills adapting the codes of this state to the present constitution; and the controller is directed to draw his warrant in favor of each of said persons for said sum last named.

SEC. 2. This act shall take effect immediately.

COLLEGES.

See EDUCATION.

The Civil Code provides for the incorporation of colleges and seminaries of learning (secs. 649–651). As there may, however, be some doubt as to how far the old laws are affected, it is deemed proper to refer to the legislation, and at the same time call attention to provisions to be found in sections 330 and 4478 of the Political Code, and 20 and 286 of the Civil Code.

The old laws on the subject of colleges will be found collated in "General Laws," sec. 573, and "Supplement," secs. 7455, 7759.

An act supplementary to an act entitled "An

act to provide for the incorporation of colleges, approved April 20, 1850," approved January 8, 1872; 1871-2, 10.

An act to amend the last-named act, approved February 7, 1874; 1873-4, 85.

There is also an act entitled "An act to confer further powers and privileges on the trustees of the Los Nitos collegiate institute," approved March 11, 1874; 1873-4, 341. This is unquestionably in force; but being special in its character, it is omitted.

COLUSA COUNTY.

References to special and local acts.—Boundaries, 1850, 62; 1851, 179; 1856, 118, 124.

Seat of justice, 1851, 179; 1853, 193.

Abolishing board of supervisors, 1853, 153, 181.

Providing for location of county seat, 1853, 193.

Regulating fees of certain county officers, 1856, 57.

Creating Tehama county, 1856, 118; 1857, 25.

Altering and defining boundary lines, 1856, 124.

Fixing time of holding court of sessions, county court, and probate court, 1857, 207; 1859, 128.

Authorizing T. O. Larkin to sell certain land belonging to his infant children, 1857, 236.

Fixing compensation of certain officers (county judge, district attorney, and treasurer), 1857, 256.

Legalizing and confirming general and supplemental assessment rolls, etc., and extending time for collection of revenue, 1859, 6.

Authorizing recorder of Tehama county to transcribe certain records, 1859, 151.

Extending time for collecting taxes, 1860, 4; 1861, 5.

Authorizing board of supervisors to levy special tax for building purposes, 1860, 33.

Providing for compensation of keepers of county jail and for payment, etc., 1860, 219.

Providing for collection of delinquent taxes, 1860, 246; 1861, 473.

Authorizing board of supervisors to levy special tax and creating contingent fund, 1862, 8.

Providing for public administrator, 1862, 43; 1863, 23.

Requiring county judge to reside at county seat, 1863, 101.

Concerning roads and highways, 1863, 309; refers to 1861, 378.

Providing for time of holding county court and probate court, 1863-4, 42.

Making county clerk *ex officio* recorder and auditor, and fixing his compensation, 1863-4, 473.

To provide for funding indebtedness, 1863-4, 515.

Terms of district court, 1865-6, 79; 1867-8, 8, 95.

Construction of wagon-road authorized, 1865-6, 219.

To prevent stallions from running at large, 1865-6, 70.

To develop agriculture and construct irrigating canal, 1865-6, 451.

Terms of district court, 1867-8, 96.

Act concerning jurors, 1867-8, 39.

Supervisors to issue bonds for road purposes, 1867-8, 100, 200.

Fees and salaries, 1867-8, 448; 1869-70, 148.

To make new outlet for flood waters of Sacmento valley, 1867-8, 462.

Act relating to roads, 1867-8, 469.

Controller to credit treasurer with tax receipts, 1867-8, 484.

Supervisors to transfer moneys, 1867-8, 501.

Act in relation to herding sheep, 1869-70, 304.

To pay salary of county treasurer, 1869-70, 808.

Incorporating town of Colusa, 1869-70, 809; 1871-2, 236.

Authorizing special tax, 1871-2, 98.

To prevent hunting and shooting on private grounds, 1871-2, 304.

Salary of district attorney, 1871-2, 653.

To protect agriculture, 1871-2, 685; 1873-4, 760.

In third congressional district, 1871-2, 714.

Location, construction, and maintenance of roads, 1871-2, 826; 1873-4, 621; 1875-6, 401, 481.

As to herding sheep, 1871-2, 890.

Terms of county and probate courts, 1873-4, 155.

Road along boundary line next Yolo county, 1873-4, 213.

In twenty-ninth senatorial district, 1873-4, 369.

Incorporating town of Colusa, 1873-4, 538.

To prevent hunting and shooting on private grounds, 1873-4, 792.

To quiet title to certain lands, 1873-4, 818.

To regulate fees and salaries, 1873-4, 873.

To legalize proceedings in reclamation district 124, 1873-4, 957.

Concerning partition fences, 1875-6, 207.

To encourage destruction of certain wild animals, 1875-6, 533.

To incorporate town of Colusa, 1875-6, 669.

Prohibiting sale of liquor within one mile of College City, 1875-6, 691.

Relative to assessments in reclamation district 124, 1875-6, 801.

Repealing act for destruction of certain wild animals, 1877-8, 2.

Regulating fees and fixing salaries, 1877-8, 36.

Authorizing supervisors to approve official bonds, 1877-8, 77.

Repealing act authorizing supervisors to approve official bonds, 1877-8, 113.

Concerning trespassing animals, 1877-8, 176.

Authorizing construction of bridge over Sacramento river at Colusa, 1877-8, 241.

Authorizing trustees of Zamwalt school district to borrow money, 1877-8, 243.

Amending act incorporating town of Colusa, 1877-8, 248.

For relief of W. J. Johnson and others against a bail bond, 1877-8, 322.

Amending act of March 26, 1874, concerning public and private roads, 1877-8, 327.

Authorizing issue of bonds in town of Colusa for road purposes, 1877-8, 369.

Granting supervisors additional powers, 1877-8, 563.

Relating to board of supervisors, 1877-8, 567.

Fixing amount of official bonds, 1877-8, 569.
For relief of county (in relation to Central Pacific railroad taxes), 1877-8, 738.
Relating to fees of justices of the peace, 1877-8, 782.
For drainage of certain lands, 1877-8, 1037.
Amending act for issue of bonds for road purposes in town of Colusa, 1880, 9 (Ban. ed. 29).

CONSTITUTION.

See AMENDMENTS TO CONSTITUTION.

The constitution, which is given in the beginning of the volume containing the Political Code, was the work of the convention called under the following act:

An Act to provide for a convention to frame a new constitution for the state of California.

[Approved March 30, 1878; 1877-8, 759.]

Election.

SECTION 1. An election shall be held on the third Wednesday in June, eighteen hundred and seventy-eight, of delegates to meet in convention to revise the constitution of this state and to frame a new constitution. No other question shall be submitted to the people or voted on at such election, any statute or law to the contrary notwithstanding. All other elections called for the same time shall be held at the next general or special state election.

Number of delegates, and where elected from.

SEC. 2. The number of delegates to be chosen to such convention shall be one hundred and fifty-two, to be apportioned as follows: The counties of San Diego and San Bernardino shall jointly elect one delegate; the county of San Diego shall elect one delegate; the county of San Bernardino shall elect one delegate; the county of Los Angeles shall elect three delegates; the counties of Santa Barbara, Ventura, and San Luis Obispo shall each elect one delegate; the counties of Tulare, Kern, and Fresno shall elect one delegate each; and the counties of Mono and Inyo shall elect one delegate; the counties of Mariposa, Merced, and Stanislaus shall jointly elect one delegate; the counties of Mariposa and Merced shall jointly elect one delegate; the county of Stanislaus shall elect one delegate; the counties of Santa Cruz, Monterey, and San Benito shall jointly elect one delegate; the county of Santa Cruz shall elect one delegate; the county of Monterey shall elect one delegate; the county of San Benito shall elect one delegate; the county of Santa Clara shall elect five delegates; the city and county of San Francisco shall elect at large thirty delegates; the city and county of San Francisco at large, jointly with the county of San Mateo, shall elect one delegate; the county of San Mateo shall elect one delegate; the county of Alameda shall elect five delegates; the counties of Contra Costa and Marin shall jointly elect one delegate; the county of Contra Costa shall elect one delegate; the county of Marin shall elect one delegate; the counties of San Joaquin and Amador shall jointly elect one delegate; the county of San Joaquin shall elect four delegates; the county of Amador shall elect two delegates; the counties of Tuolumne and Calaveras shall jointly elect one delegate; the county of Tuolumne shall elect one delegate; the county of Calaveras shall elect one delegate; the county of Sacramento shall elect five delegates; the counties of Solano and Yolo shall jointly elect one delegate; the county of Solano shall elect three delegates; the county of Yolo shall elect one delegate; the counties of Napa, Lake, and Sonoma shall jointly elect one delegate; the county of Napa shall elect one delegate; the county of Lake shall elect one delegate; the county of Sonoma shall elect four delegates; the county of Placer shall elect two delegates; the counties of El Dorado and Alpine shall jointly elect two delegates;

the county of El Dorado shall elect one delegate; the counties of Nevada and Sierra shall jointly elect one delegate; the county of Nevada shall elect four delegates; the county of Sierra shall elect one delegate; the counties of Yuba and Sutter shall jointly elect one delegate; the county of Yuba shall elect two delegates; the county of Sutter shall elect one delegate; the counties of Butte, Plumas, and Lassen shall jointly elect one delegate; the counties of Plumas and Lassen shall jointly elect one delegate; the county of Butte shall elect two delegates; the counties of Mendocino, Humboldt, and Del Norte shall jointly elect one delegate; the county of Humboldt shall elect one delegate; the county of Mendocino shall elect one delegate; the county of Del Norte shall elect one delegate; the counties of Siskiyou, Modoc, Trinity, and Shasta shall jointly elect one delegate; the counties of Siskiyou and Modoc shall jointly elect one delegate; the counties of Trinity and Shasta shall jointly elect one delegate; the county of Tehama shall elect one delegate; the county of Colusa shall elect one delegate; and thirty-two (32) delegates shall be elected by the state at large, eight (8) residents of each congressional district.

Who entitled to vote.

SEC. 3. All persons entitled by law to vote for members of assembly shall be entitled to vote at such election in their respective election districts, and not elsewhere. Such election shall be by ballot.

Regulations.

SEC. 4. The following regulations shall apply to the aforesaid election, to be held on the third Wednesday in June, A. D. eighteen hundred and seventy-eight:

1. The said election shall be held and conducted by the proper election officers of the several election districts of this state, and shall be governed and regulated in all respects by the general election laws of the state in force at the time of said election, so far as the same shall be applicable thereto, and not inconsistent with the provisions of this act.

2. At the special election to be held under this act, if no other provision for printing and using new great registers or ward registers shall have in the mean time been made by law, the copies of the great registers which were used in the several counties of this state at the general election held in the year eighteen hundred and seventy-seven shall be used. The boards of supervisors must furnish the boards of election of each precinct in their respective counties, before the day on which said special election is appointed to be held, at least one copy of the aforesaid printed great register. If the boards of supervisors cannot otherwise obtain a sufficient number of copies of the register for the purpose, it must take the copies filed in the office of the county clerk, in pursuance of section twelve hundred and sixty-eight of the Political Code. If the copy of the register which shall be furnished to any precinct shall have been used at a previous election, the character "X" may be used instead of the word "voted," as required by section twelve hundred and twenty-eight of the Political Code. It shall not be the duty of the boards of election to post copies of the great register, as required by section eleven hundred and forty-nine of the Political Code. The voter, when he offers his ballot at a polling-place, shall not be required to announce his number on the great register, as provided for in section twelve hundred and twenty-five of the Political Code.

3. The officers of the several counties of this state, whose duty it is under the law to receive and canvass the returns from the several precincts of

their respective counties, as well as the city and county of San Francisco, shall meet at the usual place of meeting for such purpose on the second Monday after said election. If at the time of meeting the returns from each precinct in the county in which polls were opened have been received, the board must then and there proceed to canvass the returns; but if all returns have not been received, the canvass must be postponed from day to day until all of the returns are received, or until six postponements have been had, when they shall proceed to make out returns of the votes cast for delegates to be members of the convention; and the proceedings of the officers whose duty it is to make out said returns shall be the same as those prescribed for like officers in the case of an election for governor, except that the returns shall be transmitted to the secretary of state. The persons receiving the highest number of votes at such election shall be elected, except in the case of persons voted for as delegates at large. Of the persons so voted for as delegates at large, the eight persons, residents of any one congressional district, who shall have received a plurality of votes over all other persons, severally, who reside in the same congressional district, shall be declared elected such delegates at large.

4. The secretary of state shall, as soon as the returns of said election shall be received by him, or within twenty days after said election, in the presence of the governor and controller of state, open and compute all of the returns received of votes given for members of the convention, and the governor shall forthwith issue his proclamation, declaring the names of the persons who have been chosen members of said convention.

Meeting of convention—Officers—Attaches.

SEC. 5. The delegates so chosen shall meet in convention in the assembly chamber at the capitol, in the city of Sacramento, on the twenty-eighth of September, eighteen hundred and seventy-eight, at twelve o'clock M. They shall, by a viva voce vote, and the vote shall be entered on the journal, elect one of their number president, and such secretaries and other officers as they may deem necessary. After the said convention has met and organized, it shall have power to adjourn to and hold its meetings at any place in said city of Sacramento other than the said assembly chamber, and all committee-rooms of the state capitol building shall be under the control of said convention. The president of the convention may appoint not exceeding one door-keeper and four pages. The convention may select phonographic reporters, and fix the amount of their compensation; also a sergeant-at-arms and one assistant. The delegates to the convention shall receive the same per diem and mileage as members of the legislature; provided, no compensation shall be allowed delegates after the expiration of one hundred days. No pay shall be allowed for any recess longer than three days at one time. The secretary shall receive eight dollars per day, and his assistants each six dollars per day; and the door-keepers, pages, sergeant-at-arms, and assistants shall receive the same compensation as provided by law for similar services and attendance upon the assembly. The amount of pay shall be certified by the president of the convention, and shall be paid by the treasurer of state, on the warrant of the controller, in the same manner as members of the legislature are paid. It shall be the duty of the governor to attend such convention at the opening thereof, and to administer the constitutional oath of office to the delegates, and to preside at all meetings thereof until a president has been elected and taken his seat, but the governor shall have neither the casting vote nor any other vote

therein. The secretary of state shall also attend at the opening of the convention and call the roll of delegates. All public officers, boards, and commissions shall furnish such convention with all such information, papers, statements, books, or other public documents in their possession as the said convention shall order or require for its use from time to time while in session. It shall be the duty of the secretary of state to furnish the members of said convention with stationery to the amount provided by law for the legislature while in session, and to the convention such stationery, manual, file-boards, and other like things as are furnished to the two houses of the legislature. Said convention may adopt such rules and regulations for its own government as a majority of its members may determine, and said convention shall be the judge of the election and qualification of its own members.

Privileges of delegates—Power to punish certain offenses.

SEC. 6. A journal of the proceedings of the said convention shall be kept, and shall, at the final adjournment thereof, be filed in the office of the secretary of state, and the constitution agreed to by the convention shall be recorded in his office. A majority of the convention shall constitute a quorum to do business. The doors of the convention shall be kept open, except when the public welfare shall require secrecy. Every delegate to the convention shall have the like privileges from arrest and from civil process as members of the legislature now have by law. For any speech or debate in the convention, the delegates shall not be questioned in any other place. The convention shall have the power to expel any of its members, and to punish its members and officers for disorderly behavior, by imprisonment or otherwise; but no member shall be expelled until the report of a committee appointed to inquire into the facts alleged as the ground of his expulsion shall have been made. The convention shall have the power to punish as a contempt, and by imprisonment or otherwise, a breach of his privileges, or of the privileges of its members, but such power shall not be exercised except against persons guilty of one or more of the following offenses:

1. The offense of arresting or subjecting a member or officer of the convention to civil process in violation of his privilege from arrest as heretofore declared;

2. That of disorderly conduct in the immediate view and presence of the convention, and directly tending to interrupt its proceedings;

3. That of publishing any false and malicious report of the proceedings of the convention, or of the conduct of a member in his delegated capacity;

4. That of refusing to attend, or be examined as a witness, either before the convention or a committee to take testimony in the proceedings of the convention;

5. That of giving or offering a bribe to a member, or of attempting by menace or any other corrupt means or device, directly or indirectly, to control or influence a member in giving his vote, or to prevent him from giving the same.

In all cases in which the convention shall punish any of its members or officers, or any other person, by imprisonment, such imprisonment shall not extend beyond the session of the convention. Every person appointed to the office of secretary of the convention shall, before he enters on the duties of his office, execute a bond to the people of the state, with such security as the controller shall approve, in the penal sum of five thousand dollars, conditioned that he shall faithfully perform the duties of his office and account for all moneys which may come into his hands by virtue thereof.

Constitution to be submitted to people.

SEC. 7. The constitution framed by such convention shall be submitted by the convention to the people for their adoption or rejection at a special election to be held on the first Wednesday of May, eighteen hundred and seventy-nine; and every person hereby entitled to vote for delegates may vote at that election, on such adoption or rejection, in the election district in which he shall then reside, and not elsewhere. The said constitution shall be voted on as a whole. No other question than the adoption or rejection of the proposed constitution shall be submitted to the people or voted on at such election, any statute or law to the contrary notwithstanding. The convention shall prescribe the publication of said constitution, and the notice to be given of the election. The ballots or tickets shall have printed or written upon them the words "For the new constitution," or "Against the new constitution," and all the provisions of law now or at that time existing in regard to general elections shall be applicable to such election, except that the provisions of the first and second subdivisions of section four of this act shall also apply to said election. The canvassing and returns of the votes cast upon such question shall, in such manner as the convention shall direct, be certified to the executive of the state, who shall call to his assistance the controller, treasurer, and secretary of state, and compare the votes as certified to him. If, by such an examination, it is ascertained that a majority of the whole number of votes cast at such election be in favor of such new constitution, the executive of this state shall, by his proclamation, declare such new constitution to be the constitution of the state of California, and that it will take effect at such time as the said convention may have, in its discretion, by resolution, or in said constitution itself, fixed. If said convention fix no time for said constitution to take effect, then it shall take effect immediately upon such proclamation being made.

Perjury.

SEC. 8. All willful and corrupt false swearing in taking any of the oaths prescribed by this act, or by the laws of this state made applicable to this act, or in any other mode or form in carrying into effect this act, shall be deemed perjury, and shall be punished in the manner now prescribed by law for willful and corrupt perjury.

Secretary of state to publish this act.

SEC. 9. It shall be the duty of the secretary of state to cause this act to be published once a month after its passage, until the election of delegates herein provided, in not more than five of the public newspapers published in this state—one of said publications to be in some newspaper published in the city and county of San Francisco, and one in the city of Sacramento, one in the county of Los Angeles, and one in the county of Nevada, and one in the county of Tulare; and the expense of publishing the same, and all other legal expenses incurred in printing for the convention, shall be audited by the controller and paid by the state treasurer according to law.

Printing.

SEC. 10. All the printing necessary for the said convention, under the provisions of this act, shall be done and performed at the state printing-office.

Vacancy, how filled.

SEC. 11. In case any vacancy occurs by reason of the death, resignation, or otherwise, of any delegate elected to said convention, the same shall be filled by the convention.

Appropriation authorized.

SEC. 12. The sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the state treasury to pay the expenses of the convention provided for in this act.

SEC. 13. This act shall take effect immediately.

An Act to provide for the publication of the debates and proceedings of the constitutional convention of the state of California.

[Approved March 31, 1880; 1880, 17 (Ban. ed. 60).]

This act authorized the transcription of the short-hand notes of the reporters of the constitutional convention at a cost not to exceed eighteen thousand dollars, and the printing of such a number of copies of the reports as the state board of examiners might deem advisable, at a cost not to exceed eighteen thousand dollars. It also provided for the distribution of a certain number of such copies, and for the sale of the remainder at a sum not to exceed fifteen dollars per set.

CONTRA COSTA COUNTY.

References to special and local acts.—Boundaries, 1850, 60, 156; 1851, 174; 1852, 178; 1853, 56.

Seat of justice, 1850, 60, 156; 1851, 174; 1852, 178.

Providing for disposition of certain property at Martinez, 1851, 305.

For relief of Frank Maynard, 1852, 262.

Creating Alameda county, 1853, 56.

Abolishing board of supervisors, 1854, 52.

To adjust indebtedness of Alameda county to Contra Costa county, and provide for payment, 1854, 218; 1857, 105; 1858, 160.

To fund debt and provide for payment, 1855, 9, 211; 1856, 221; 1857, 107; 1858, 211.

Fixing time of holding courts authorized to be held by county judge, 1855, 17; 1858, 95; 1859, 31

Authorizing funding commissioners to audit certain claims (for erection and furnishing court-house), 1855, 41.

Granting privilege to R. Haley and others to erect and build wharf on San Pablo ranch, 1856, 129.

Providing for funding debt not heretofore provided, 1856, 221; 1858, 111.

Fixing salary of county judge, 1857, 2; 1860, 315.

Fixing compensation of district attorney, 1857, 13; 1860, 24.

Extending time of collecting taxes, 1857, 32; 1859, 7; 1860, 5; 1861, 1.

Concerning lawful fences, 1857, 54; 1858, 40; 1861, 277.

Authorizing board of supervisors to pay current expenses of county, 1857, 148.

Regulating fees of county officers, 1858, 16.

Fixing terms of probate court, 1858, 95.

Creating sinking fund to pay outstanding indebtedness, 1858, 109; 1861, 239.

Declaring Nueces and Diablo creeks navigable, 1858, 127.

Concerning roads and highways, 1858, 227; 1859, 16; 1860, 25, 327.

Fixing time of holding court of sessions and county court, 1859, 31.

Authorizing construction of certain wharves by J. R. Price and others, 1859, 35; 1860, 19.

Concerning office of sheriff, 1859, 94.

Extending time for levying taxes, 1859, 107.

Authorizing C. Minturn and others to construct and maintain wharf, 1859, 361.

Providing for payment of judgment in favor of T. C. Gilman against county, 1860, 94.

Authorizing board of supervisors to appropriate money to use of Contra Costa county agricultural society, 1860, 146; 1861, 64.

Authorizing guardians of Alice Marsh to sell personal property, 1860, 205.

Authorizing commissioners of funded debt to reissue certain coupons of bonds, 1860, 330.

Granting appeals from board of supervisors to county court (in regard to road matters), 1860, 343.

Providing for collection of delinquent taxes, 1861, 119.

Authorizing trustees of Contra Costa educational association to sell or mortgage real or other property, etc., 1861, 179.

Granting to W. Fitzpatrick and associates right to construct railroad, 1861, 264, 278; 1863, 360.

Enabling and requiring board of supervisors to complete levy of taxes for road purposes for 1861, 1861, 284.

Authorizing C. J. Collins and associates to construct and maintain ferry from New York to Point Collberg and wharves, 1861, 300.

Concerning records of fees and duties of certain officers (clerk and recorder and sheriff), 1861, 376.

Authorizing construction and maintenance of wharf (in San Joaquin river by G. McCoy), 1861, 418.

Providing for better support of common schools, 1861, 475.

Authorizing levy of special property and poll tax for establishment and maintenance of roads and bridges, 1862, 32.

Authorizing construction and maintenance of wharf (in San Joaquin river by G. W. Brown and others), 1862, 43.

Authorizing board of supervisors to transfer surplus moneys remaining in Gilman judgment fund, 1862, 44.

Authorizing construction of wharf at point on southerly bank of San Joaquin river (to W. W. Greenhood and others), 1862, 89.

Annexing county to fourth judicial district, 1862, 97.

Authorizing construction of wharf at point on southerly bank of San Joaquin river to Pittsburg Railroad Company, 1862, 116.

Authorizing J. M. Tewksbury and associates

to build wharf at Potrero of San Pablo ranch, 1862, 138.

Authorizing W. O'Connell and J. Fay to build wharf at Slaughterhouse point, 1862, 139.

Authorizing L. E. Morgan and associates to construct and maintain wharf at San Pablo ranch, 1862, 168.

Granting to W. H. Tillinghast and associates right to construct wharf at "New York on the Pacific," 1862, 213.

Authorizing H. Thorne and others to reconstruct and make wagon-road, 1862, 240; 1863, 578.

Providing for collection of road poll-taxes, 1862, 251.

Authorizing board of supervisors to audit and allow claim of M. R. Barber, and to levy special tax, 1862, 328.

Providing for equitable adjustment of claims arising from indebtedness of Contra Costa county outstanding at organization of Alameda county, and for apportioning award, etc., 1862, 405.

Fixing terms of court of sessions, county court, and probate court, 1862, 484.

Authorizing M. A. Wheaton and associates to establish and maintain ferry across upper end of Suisun bay, 1862, 495.

Providing for construction of public wagon and stage road from Walnut Creek house to Alameda county line, 1862, 506.

Creating contingent fund, 1862, 545.

In relation to establishment, maintenance, and protection of public and private roads, 1863, 151; refers to 1861, 389.

Authorizing W. O'Connell and assigns to build wharf at Slaughterhouse point, 1863, 357.

Authorizing construction and maintenance of wharf in San Joaquin river by M. S. Chase and others, 1863, 376.

Authorizing W. Kohl and associates to establish and maintain steam-ferry between San Pablo ranch and San Quentin or San Francisco, 1863, 500.

Regulating fees in office, 1863, 666.

Authorizing construction and maintenance of wharf near Antioch by California Copper Smelting Works, 1863, 733.

Concerning hogs running at large, 1863, 774.

Providing for saving and transfer of causes pending in the district court, 1863–4, 500.

Times of holding county and probate court, 1865–6, 416.

Term of fifteenth district court, 1865–6, 101.

Authorizing Edward Bent to render stream navigable, 1865–6, 174.

Franchise granted to Black Diamond Coal Mining company to build tramroad, 1865–6, 307.

Franchise to same company for wharf, 1865-6, 434.

To legalize tax levy, 1865–6, 475.

Franchise to O. C. Coffin and others for tramroad and railroad, 1865–6, 569; 1867–8, 617.

Compensation of district attorney, 1865–6, 634.

Public schools in, 1865–6, 659.

Franchise to F. K. Shattuck and associates for tramroad or railroad, 1865–6, 685.

County treasurer to collect taxes, 1865–6, 690.

Cultivation of oysters in, 1865–6, 721.

Ferry franchise, Vallejo to Pinole valley, 1865–6, 782; 1867–8, 677.

Franchise to F. K. Shattuck and others for wharf near Antioch, 1865–6, 842; 1867–8, 14.

Wharf franchise to C. Cheeney and others, 1867–8, 199.

Public and private roads, 1867–8, 223; 1869–70, 133.

Hogs running at large, 1867–8, 239.

Fees and salaries, 1867–8, 448; 1869–70, 148.

Improve navigation of Walnut creek, 1867–8, 484.

To donate to Martinez and Danville Railroad Company, 1867–8, 531.

Steam-ferry at Collinsville, 1867–8, 600.

Concerning tax collector, 1867–8, 284.

Act in relation to herding sheep, 1869–70, 304.

Assessor to employ deputy, 1869–70, 403.

Creating board of levee and street commissioners, 1869–70, 426.

To establish steam-ferry across the straits of Carquinez, 1869–70, 507.

Notaries public, 1869–70, 779; 1871–2, 46.

Collection of taxes, duty of collector, 1867–8, 677.

Bounty tax for destruction of squirrels, 1869–70, 316.

Fixing bonds of sheriff, 1871–2, 158.

Public administrator to act as coroner, 1871–2, 170.

Concerning bond of public administrator, 1871–2, 183.

To provide for deficiencies in funds of school districts, 1871–2, 234.

To prevent hunting and shooting on private grounds, 1871–2, 304.

To authorize Masonic and Odd Fellows' Cemetery Association to remove human remains, 1871–2, 389.

Compensation of district attorney, 1871–2, 514, 653.

In second congressional district, 1871–2, 714.

Defining boundaries of Antioch, 1871–2, 725.

Concerning roads and highways, 1871–2, 779; 1873–4, 170.

To encourage the destruction of squirrels and gophers, 1871–2, 834.

As to herding of sheep, 1871–2, 890.

School-house in Martinez school district, 1873–4, 232.

To prevent hogs, etc., running at large in Martinez, 1873–4, 302.

To abate squirrel nuisance, 1873–4, 321; 1875–6, 338.

In fifteenth senatorial district, 1873–4, 368.

To quiet title to certain salt-marsh and tide lands, 1873–4, 616.

Relative to swamp-land district 118, 1873–4, 689.

Levy of special tax, 1873–4, 705.

To prevent hunting and shooting on private grounds, 1873–4, 792.

To regulate fees and fix compensation of certain officers, 1875–6, 84.

To regulate salaries, 1875–6, 91.

As to assessment in swamp-land reclamation district No. 118, 1875–6, 140.

Concerning roads and highways, 1875–6, 237.

For distribution of school money, 1875–6, 332.

Fixing compensation of assessors for collecting taxes on personal property, 1875–6, 529.

To create West Side irrigation district, 1875–6, 731, 885.

To incorporate town of Martinez, 1875–6, 822.

Providing for distribution of school moneys, 1877–8, 182.

Fixing fees of justices of the peace, 1877–8, 269.

Legalizing tax for school-house in New York school district, 1877–8, 283.

Amending incorporation act of town of Martinez, 1877–8, 297.

To prevent destruction of deer on Mount Diablo, 1877–8, 599.

Amending act of March 11, 1876, concerning roads and highways, 1877–8, 611.

For extermination of squirrels, 1877–8, 815.

Repealing "West Side irrigation district" acts of 1876, 1877–8, 887.

CORPORATIONS.

The law in reference to the formation, powers, privileges, obligations, and incidents of corporations will be found in the Civil Code, secs. 283–648, inclusive, which seems to have superseded all the old laws upon the same subject. By operation, however, of section 288, the old laws remain in force in so far as applicable to certain corporations formed previous to January 1, 1873, therein referred to. They are, therefore, now to be considered only as special in their character. They will be found collected and collated in "General Laws," sec. 746, and "Supplement," sec. 7611.

In addition to the statutes collected and collated as above mentioned, the following later enactments, in addition to those inserted in the Civil Code, may be referred to:

An act to amend an act entitled "An act to provide for the formation of corporations for the accumulation and investment of funds and savings, approved April 11, 1862," approved February 21, 1872; 1871–2, 132.

An act to amend an act entitled "An act concerning street-railroads, approved March 29, 1870," approved March 23, 1872; 1871–2, 515.

An act to amend an act entitled "An act to provide for the formation of corporations for certain purposes, approved April 14, 1853," approved March 23, 1872; 1871–2, 526. This act was in reference to manufacturing, mining, and other business corporations, and provides for the filing of certified certificates in the counties in which they were to carry on business.

An act concerning assessments upon the stock of corporations (relating to collection of assessments of the "Southern District Agricultural Association"), approved March 27, 1872; 1871–2, 626.

An act supplemental to an act entitled "An act to authorize the incorporation of canal companies, and to provide for the construction of canals and ditches, approved April 2, 1870," approved March 30, 1872; 1871–2, 732. This act applies only to Tehama county.

An act to authorize the Mutual Life Insurance Company of New York and the Equitable Life Assurance Company of the United States to invest moneys in real and personal estate within the limits of California, approved March 28, 1874; 1873–4, 777.

CRUELTY TO ANIMALS.

The Political Code, sec. 19, also the Penal Code, sec. 23, expressly retained in force "An act for the more effectual prevention of cruelty to animals, approved March 30, 1868;" amended March 15, 1872; 1871–2, 393; but it was afterwards repealed by the following act:

An Act for the more effectual prevention of cruelty to animals.

[Approved March 20, 1874; 1873–4, 499.]

Who entitled to benefits of this act.

SECTION 1. Any three or more citizens of the state of California, who have heretofore, or who shall hereafter, incorporate as a body corporate, under the general laws for incorporations in this state, for the purpose of preventing cruelty to animals, may avail themselves of the privileges of this act; provided, that the corporate body first formed as aforesaid in any county shall be the only one so entitled to the benefits and privileges of this act in said county.

Powers.

SEC. 2. The said societies may make and adopt by-laws governing the admission of associates and members, providing for all meetings, and for assistant and district or local officers; providing, also, for means and systems for the effectual attainment of the objects contemplated by this act; for the regulation and management of its business affairs, and for the effectual working of the societies; prescribing, also, the duties of all their officers; for the outlay of all moneys and the auditing of all accounts; provided, that such by-laws shall not conflict with the laws of the state of California or of the United States, or with any provisions of this act.

SEC. 3. Said societies shall elect officers and fill vacancies according to the provisions of their by-laws.

Who may make arrests.

SEC. 4. All sheriffs, constables, police and peace officers, are empowered to make arrests for the violation of any of the provisions of this act, which by this act is denominated a misdemeanor, in the same manner as is by law provided for arrests in all cases of misdemeanors.

Powers of those authorized.

SEC. 5. All members and agents, and all officers of each or any of the societies so incorporated, as shall by the trustees of said societies be duly authorized in writing, approved by the county judge of the county, and sworn in the same manner as are constables and peace-officers, shall have power to lawfully interfere to prevent the perpetration of any act of cruelty upon any dumb animal, and may use such force as may be necessary to prevent the same, and to that end may summon to their aid any by-stander; they may make arrests for the violation of any of the provisions of this act, in the same manner as is herein provided for other officers, and may carry the same weapons that such officers are authorized to carry; provided, that all such members and agents shall, when making such arrests, exhibit and expose a suitable badge to be adopted by said society. All persons resisting said specially appointed officers, as such, shall, upon conviction, be deemed guilty of a misdemeanor.

Cruelty to animals defined.

SEC. 6. Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates, or cruelly kills, or causes or procures to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated, or cruelly killed, any animal, and whoever, having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary cruelty upon the same, or fails to provide the same with proper food, drink, shelter, or protection from the weather, or who cruelly drives the same when unfit for labor, shall, upon conviction, be deemed guilty of a misdemeanor.

SEC. 7. If any person shall carry, or cause to be carried, in or upon any vehicle, or otherwise, any domestic animal, in a cruel or inhuman manner, or knowingly and willfully authorizes or permits the same to be subjected to unnecessary torture, suffering, or cruelty of any kind, shall, upon conviction, be deemed guilty of a misdemeanor; and whenever any such person shall be taken into custody therefor by any officer, such officer may take charge of such vehicle and its contents, together with the horse or team attached to said vehicle, and deposit the same in some safe place of custody; and any necessary expenses which may be incurred for taking care of and keeping the same shall be a lien thereon, to be paid before the same can be lawfully recovered; and if the said expenses, or any part thereof, remain unpaid, they may be recovered, by the person incurring the same, of the owner of said domestic animal, in any action therefor.

Causing animals to fight.

SEC. 8. Any person who shall cause any bull, bear, cock, dog, or other animal to fight for his amusement or for gain, worry or injure each other, or any person who shall permit the same to be done on any premises under his charge or control, and any person who shall aid, abet, or be present at such fighting and worrying of such animal, as a spectator, shall, upon conviction, be deemed guilty of a misdemeanor.

Training or being present.

SEC. 9. Whoever owns, possesses, keeps, or trains any bird or animal, with the intent that such bird or animal shall be engaged in an exhibition of fighting, or is present at any place, building, or tenement where preparations are being made for an exhibition of the fighting of birds or animals, with the intent to be present at such exhibition, or is present at such exhibition, shall, upon conviction, be deemed guilty of a misdemeanor.

Complaint and arrest.

SEC. 10. When complaint is made on oath, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes that any of the provisions of law relating to or in any way affecting dumb animals are being or are about to be violated in any particular building or place, such magistrate shall issue and deliver immediately a warrant directed to any sheriff, constable, police or peace officer, or officer of any incorporated association qualified as provided in the fifth section of this act, authorizing him to enter and search such building or place, and to arrest any person or persons there present violating, or attempting to violate, any law relating to or in any way affecting dumb animals, and to bring such person or persons before some court or magistrate of competent jurisdiction, within the city or township within which such offense has been committed, to be dealt with according to law, and such attempt shall be held to be a violation of section six of this act.

Arrest without warrant.

SEC. 11. Any sheriff, constable, police or peace officer, or officer qualified as provided in section five of this act, may enter any place, building, or tenement, where there is an exhibition of the fighting of birds or animals, or where preparations are being made for such an exhibition, and, without a warrant, arrest all persons there present.

Impounding without food, etc.

SEC. 12. Any person who shall impound, or cause to be impounded in any pound, any domestic animal, shall supply the same during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof, shall, upon conviction, be deemed guilty of a misdemeanor. In case any domestic animal shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve consecutive hours, it shall be lawful for any person, from time to time, as it shall be deemed necessary, to enter into and upon any pound in which any such domestic animal shall be confined, and supply it with necessary food and water so long as it shall remain so confined. Such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall not be exempt from levy and sale upon execution issued upon a judgment therefor.

Permitting to go without care.

SEC. 13. Every owner, driver, or possessor of any old, maimed, or diseased horse, mule, cow, or other domestic animal, who shall permit the same to go loose in any lane, street, square, or lot, of any city or township, without proper care and attention, for more than three hours after knowledge thereof, shall, on conviction, be deemed guilty of a misdemeanor; provided, that this shall not apply to such owner keeping any old or diseased animal belonging to him on his own premises with proper care. Every sick, disabled, infirm, or crippled horse, ox, mule, cow, or other domestic animal which shall be abandoned on

the public highway, or in any open space in any city or township, may, if after due search by a peace-officer, or officer of said society, no owner can be found therefor, be killed by such officer; and it shall be the duty of all peace and public officers to cause the same to be killed on information of such abandonment.

Punishment.

SEC. 14. Every person convicted of any misdemeanor under this act shall be punished as is by law provided for the punishment of misdemeanors; and all fines imposed or collected in any county, under the provisions of this act, shall inure to the society in said county, organized and incorporated as herein provided, in aid of the benevolent object for which it is incorporated.

Prosecutions.

SEC. 15. All prosecutions for the violation of any of the provisions of this act shall be conducted and prosecuted in a court of competent jurisdiction, and any member of said society, authorized as provided in section five of this act, may appear and prosecute in any of said courts, for any violation of any of the provisions of this act, whether or not he be an attorney or counselor at law; provided, that all such prosecutions shall be conducted in the name of the people of the state of California.

Terms defined.

SEC. 16. In this act the singular shall include the plural; the word "animal" shall be held to include every living dumb creature; the words "torture," "torment," and "cruelty" shall be held to include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted, and the words "owner" and "person" shall be held to include corporations as well as individuals; and the knowledge and acts of agents of and persons employed by corporations, in regard to animals transported, owned, or employed by or in the custody of such corporations, shall be held to be the act and knowledge of such corporations as well as such agent or employees.

Construction of act.

SEC. 17. No part of this act shall be deemed to interfere with any of the laws of this state known as the "game laws," or any laws for the destruction of certain birds; nor shall this act be deemed to interfere with the right to destroy any venomous reptiles, or any animal known as dangerous to life, limb, or property, or to interfere with the right to kill all animals used for food, or with any properly conducted scientific experiments or investigations, which experiments or investigations shall be performed only under the authority of the faculty of some regularly incorporated medical college, or university of the state of California.

SEC. 18. The act entitled "An act for the more effectual prevention of cruelty to animals," approved March thirtieth, eighteen hundred and sixty-eight, and amendments thereto, approved March fifteenth, eighteen hundred and seventy-two, are hereby appealed.

SEC. 19. This act shall take effect from and after its passage.

CRUELTY TO CHILDREN.

An Act for the incorporation of societies for the prevention of cruelty to children.

[Approved April 3, 1876; 1875-6, 830.]

Parties may incorporate.

SECTION 1. Any five or more persons of full age, a majority of whom shall be citizens and residents within the state, who shall desire to associate themselves

together for the purpose of preventing cruelty to children, may make, sign, and acknowledge, before any person authorized to take acknowledgments of deeds of this state, and file in the office of the secretary of state, and also in the office of the clerk of the county in which the business of the society is to be conducted, a certificate, in writing, in which shall be stated the name or title by which said society shall be known in law, the particular business and objects of such society, the number of trustees, directors, or managers, to manage the same, and the names of the trustees, directors, or managers of the society for the first year of its existence; but such certificate shall not be filed unless the written consent and approbation of the district judge of the district in which the place of business or principal office of such society shall be located be indorsed on such certificate.

Powers of corporation.

SEC. 2. Upon filing the certificate as aforesaid, the persons who shall have signed and acknowledged such certificate, and their associates and successors, shall thereupon, by virtue of this act, be a body politic and corporate by its name stated in such certificate, and as such shall have power:

1. To have perpetual succession by its corporate name;
2. To sue and be sued, complain and defend, in any court of law or equity;
3. To make and use a common seal, which may be affixed by making an impression directly in the paper, and alter the same at pleasure;
4. To appoint such officers, managers, and agents as the business of the corporation may require;
5. To make by-laws, not inconsistent with the laws of this state or of the United States, for the management of its property and the regulation of its affairs;
6. To contract and be contracted with;
7. To take and hold by gift, purchase, grant, devise, or bequest, any property, real or personal, and the same to dispose of at pleasure. But such a corporation shall not, in its corporate capacity, hold real estate the yearly income derived from which shall exceed the sum of fifty thousand dollars;
8. To exercise any corporate powers necessary for the exercise of the powers above enumerated and given.

May prefer complaint.

SEC. 3. Any society so incorporated may prefer a complaint before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting children, and may aid in bringing the fact before such court or magistrate in any proceeding taken.

Officers to give aid.

SEC. 4. All magistrates, constables, sheriffs, and officers of police shall, as occasion may require, aid the society so incorporated, its officers, members, and agents, in the enforcement of all laws which now are or may hereafter be enacted relating to or affecting children.

Act, how applied.

SEC. 5. The provisions of this act shall not extend or apply to any association or individuals who shall, in the certificate filed as hereinabove provided, use or specify a name or style the same, or substantially the same, as that of any previously existing incorporated society in this state.

SEC. 6. This act shall take effect immediately.

DEL NORTE COUNTY

References to special and local acts.—Boundaries, 1857, 35; 1858, 21.
Seat of justice, 1857, 35.
Providing for organization, 1857, 35; 1858, 36; 1859, 300.
Reducing amount of bonds to be given by county officers, 1858, 206.
Legalizing certain matters connected with the Crescent City Plank Road and Turnpike Company, 1859, 60.
In relation to trial jurors in court of sessions and county courts, 1859, 159; 1862, 247.
Authorizing board of supervisors to levy additional tax for county purposes, 1860, 53.
Fixing time for holding court of sessions and county court, 1860, 72.
For adjustment and final settlement of indebtedness of Del Norte county to Klamath county, 1860, 73.
Fixing times of meeting of board of supervisors, 1860, 224.
Providing for public administrator, 1862, 43; 1863, 23.
Concerning roads and highways, 1862, 69; 1863–4, 296.
To provide means to pay indebtedness of Del Norte county to Klamath county, 1862, 209.
To regulate mileage, 1863, 241.
Authorizing board of supervisors to issue certain bonds and providing for payment, 1863–4, 105.
In regard to holding terms of county court, 1863–4, 113.
In regard to offices of recorder and auditor, etc., 1863–4, 187.
Concerning offices of clerk and recorder, 1863–4, 395.
County clerk ex officio recorder, 1865–6, 12.
Exemption from act concerning canal companies, 1865–6, 53, 604; 1867–8, 134.
Creating redemption fund, 1865–6, 221; 1869–70, 403; 1873–4, 88.
For the relief of, 1865–6, 376.
Roads and highways in, 1865–6, 544.
Act concerning jurors, 1867–8, 39.
Indigent sick, 1867–8, 58; 1869–70, 48, 808.
Official bonds of county officers, 1867–8, 349.
State to cede certain property to Crescent City, 1867–8, 335; 1869–70, 131.
Fees and salaries, 1867–8, 448; 1869–70, 148.
Levy of state and county taxes, 1867–8, 562.
For the erection of a jail, 1869–70, 120.
Changing time for settlement with state, 1869–70, 424.
To issue bonds in aid of telegraph lines, 1869–70, 508; 1873–4, 81.
To fix official bond of tax collector, 1869–70, 808.
To provide for indigent sick, 1871–2, 169.
To prevent propagation of Scotch or Canada thistle, 1871–2, 214.
Salary of district attorney, 1871–2, 654.
In third congressional district, 1871–2, 714.
To change manner of electing supervisors, 1871–2, 756; 1873–4, 12.
Concerning roads and highways, 1871–2, 760; 1873–4, 81.
To declare Lake Earl navigable, 1873–4, 59.
Authorizing supervisors to transfer certain funds, 1873–4, 89.
In twenty-seventh senatorial district, 1873–4, 369.
Resolution respecting breakwater at Crescent City, 1873–4, 964.
Resolution respecting north boundary line, 1873–4, 974.
To transfer swamp-land fund to general fund, 1875–6, 143.
To repeal all special road laws, 1875–6, 335.
In relation to fence and pound districts, 1875–6, 391.
In relation to superintendent of schools (salary), 1875–6, 507.
To encourage destruction of certain wild animals, 1875–6, 533.
Fixing terms of county and probate courts, 1877–8, 1.
Fixing bonds of county treasurer, 1877–8, 2.
Repealing act for destruction of certain wild animals, 1877–8, 2.
To declare Smith river navigable, 1877–8, 799.
In relation to road, poll, and property tax in Crescent City, 1877–8, 204.
To declare Klamath river navigable, 1880, 136 (Ban. ed. 402).

DENTISTRY.

An Act to insure the better education of practitioners of dental surgery, and to regulate the practice of dentistry in the state of California.

[Approved March 12, 1885; 1885, 110.]

Practice of dentistry.

SECTION 1. It shall be unlawful for any person who is not at the time of the passage of this act engaged in the practice of dentistry in this state to commence such practice, unless he or she shall have obtained a certificate as hereinafter provided.

Board of examiners.

SEC. 2. A board of examiners, to consist of seven practicing dentists, is hereby created, whose duty it shall be to carry out the purposes and enforce the provisions of this act. The members of said board shall be appointed by the governor from the dental profession of the state at large. The term for which the members of said board shall hold their offices shall be four years,

except that two of the members of the board, first to be appointed under this act, shall hold their office for the term of one year, two for the term of two years, two for the term of three years, and one for the term of four years, respectively, and until their successors shall be duly appointed and qualified. In case of a vacancy occurring in said board, such vacancy shall be filled by the governor in conformity with this section.

Officers, quorum.

SEC. 3. Said board shall choose one of its members president, and one the secretary thereof, and it shall meet at least once in each year, and as much oftener and at such times and places as it may deem necessary. A majority of said board shall at all times constitute a quorum, and the proceedings thereof shall at all reasonable times be open to public inspection.

Registration by dentists.

SEC. 4. Within six months from the time that this act takes effect, it shall be the duty of every person who is now engaged in the practice of dentistry in this state to cause his or her name and residence or place of business to be registered with said board of examiners, who shall keep a book for that purpose. The statement of every such person shall be verified under oath before a notary public or justice of the peace, in such manner as may be prescribed by the board of examiners. Every person who shall so register with said board as a practitioner of dentistry shall receive a certificate to that effect, and may continue to practice as such without incurring any of the liabilities or penalties provided in this act, and shall pay to the board of examiners for such registration a fee of one dollar. It shall be the duty of the board of examiners to forward to the county clerk of each county in the state a certified list of the names of all persons residing in his county who have registered in accordance with the provisions of this act, and it shall be the duty of all county clerks to register such names in a book, to be kept for that purpose.

Certificates to practice dentistry.

SEC. 5. Any and all persons who shall so desire may appear before said board at any of its regular meetings and be examined with reference to their knowledge and skill in dental surgery, and if the examination of any such person or persons shall prove satisfactory to said board, the board of examiners shall issue to such persons as they shall find to possess the requisite qualifications a certificate to that effect, in accordance with the provisions of this act. Said board shall also indorse as satisfactory diplomas from any reputable dental college, when satisfied of the character of such institution, upon the holder furnishing evidence satisfactory to the board of his or her right to the same, and shall issue certificates to that effect within ten days thereafter. All certificates issued by said board shall be signed by its officers, and such certificates shall be prima facie evidence of the right of the holder to practice dentistry in the state of California.

Violation.

SEC. 6. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction may be fined not less than fifty dollars nor more than two hundred dollars, or confined six months in the county jail, for each and every offense. All fines recovered under this act shall be paid into the common-school fund of the county in which such conviction takes place.

Examination fee.

SEC. 7. In order to provide the means for carrying out and maintaining the provisions of this act, the said board of examiners shall charge each person applying to or appearing before them for examination for a certificate of qualifications a fee of ten dollars, which fee shall in no case be returned, and out of the funds coming into the possession of the board from the fees so charged, and penalties received under the provisions of this act, all legitimate and necessary expenses incurred in attending the meetings of said board shall be paid. And no part of the expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of expense above provided for shall be held by the secretary of said board as a special fund for meeting the expenses of said board, and carrying out the provisions of this act, he giving such bonds as the board shall from time to time direct. And said board shall make an annual report of its proceedings to the governor by the first of December of each year, together with an account of all moneys received and disbursed by them pursuant to this act.

Registering certificate.

SEC. 8. Any person who shall receive a certificate from said board to practice dentistry shall cause his or her certificate to be registered with the county clerk of the county in which such person may reside, and the county clerk shall charge for registering such certificate a fee of one dollar. Any failure, neglect, or refusal on the part of any person holding such certificate to register the same with the county clerk as above directed, for a period of six months, shall work a forfeiture of the certificate, and no certificate when once forfeited shall be restored, except upon the payment to the said board of examiners of the sum of twenty-five dollars, as a penalty for such neglect, failure, or refusal.

Falsely pretending to hold license.

SEC. 9. Any person who shall knowingly and falsely claim or pretend to have or hold a certificate of license, diploma, or degree, granted by any society organized under and pursuant to the provisions of this act, or who shall falsely, or with intent to deceive the public, claim or pretend to be a graduate from any incorporated dental college, shall be deemed guilty of a misdemeanor, and shall be liable to the same penalty as provided in section six.

Physicians may extract teeth.

SEC. 10. Nothing in this act shall be so construed as to prohibit any practicing physician from extracting teeth.

SEC. 11. This act shall take effect immediately.

DONATIONS TO STATE, COUNTY, CITY, OR TOWN.

An Act to provide for the receipt and appropriation of donations to the state, or counties, or cities and counties, or cities or towns therein.

[Approved April 3, 1880; 1880, 20 (Ban. ed. 106).]

Donations of money to state, etc.

SECTION 1. Whenever any individual or corporation shall donate to the state, or to either of the counties, or cities and counties, or cities or towns, of this state, any money, the state treasurer, and the treasurer of such county, city and county, or city or town, is hereby authorized to receive the same, and in case the individual or corporation making the same shall designate, at the time of making such donation, in writing, the fund he desires to benefit thereby, the

said donation shall be appropriated accordingly; but in case no such designation be made, then all such donations shall be paid into the common-school fund.

SEC. 2. This act shall be in force from and after its passage

DRAINAGE.

An Act entitled "An act to provide for the protection of lands from overflow, other than lands recognized as swamp-lands."

[Approved April 15, 1880; 1880, 55 (Ban. ed. 227).]

Protection district, how organized—Boundaries.

SECTION 1. Whenever the owners of any land other than lands recognized as swamp-lands susceptible of protection from overflow shall wish to have the same organized into a protection district, they shall present a petition, signed by the owners of more than one half the acres of such land, to the board of supervisors of the county in which the larger portion of such land may be situated. Said petition shall define the boundaries of the proposed district, and as nearly as practicable shall state the number of acres and town or city lots included therein, and that no part of the same is included in any other protection or reclamation district, together with the names of the owners thereof, and ask the same to be set apart and erected into a protection district under the provisions hereinafter contained. Should a town or city be included in any such district, each lot of less than an acre in such town or city shall be deemed equivalent to an acre for the purposes of this petition.

Publication.

SEC. 2. Upon the receipt of the petition contemplated in section one of this act, the board of supervisors shall order such petition published in some newspaper printed in the county in which the larger portion of the district may be situated, and if there be no newspaper published in such county, then in some newspaper having a general circulation in the proposed district, for thirty days prior to any further action being taken. They shall also fix a day for the hearing of such petition, and publish the same in connection with the petition, notifying all persons interested of such proposed action.

Hearing—Election.

SEC. 3. Upon the day appointed for the hearing of said petition, the board of supervisors shall consider the same, and should they find that any lands are improperly included in or excluded from the proposed district, they shall make, upon satisfactory evidence of such fact, such changes in the proposed boundaries as may by them be deemed just and proper. Should the board of supervisors make any changes in said boundaries, they shall note the same on the petition, and organize or reject the district with the boundaries they have fixed, and their action in that respect shall be conclusive; such action shall be entered in the journal of their proceedings, together with the petition, the names of the signers thereto, and the evidence of publication. If the board shall order a district to be organized, they shall, in such order, direct an election to be held within the boundaries thereof, and within twenty days from the date of such order, for three trustees, who must be resident land-owners of the district; one of whom shall be elected for one year, one for two years, and one for three years; and there shall be an annual election held each year thereafter, at which one trustee shall be elected for three years. At the time of ordering the elec-

tion for trustees the board of supervisors shall appoint one inspector and two judges of said election, in each voting precinct in the district, who, upon the day appointed, shall keep correct account of the number of acres voting, and for whom, and report the result of the same to the said board of supervisors at their next meeting, who shall order the clerk to notify the persons so elected of their election. No one shall be permitted to vote at such election unless he is a land-owner of the district; and in voting, each voter shall be entitled to cast one vote for each acre, and for each town and city lot, the title to which is shown by the records of the county in which the district is situated to be in him.

Trustees, organization—Powers.

SEC. 4. Within twenty days after being notified of their election, the persons so elected shall meet and organize a board of trustees, by the election from their number of a chairman and secretary, and enter upon the discharge of their duties. When organized as aforesaid, the board of trustees shall have power to acquire, by donation or purchase, any real or personal property needed for the district, and hold the same for the uses of such district, and when necessary, may exercise the right of eminent domain, as provided by law. They shall have charge of all works of protection, and superintend the construction or repair of the same, and shall have power to do all other acts necessary for the accomplishment of the objects for which such district was organized. They shall provide proper books, in which they shall keep a correct record of all their proceedings, which shall be kept at some place within the district, and shall be subject to inspection by all persons during business hours. They may employ competent engineers, and shall proceed to survey, mark out, and locate the necessary works of protection for their district, and provide plans and specifications for the same, and estimates of costs of construction, and submit the same to the board of supervisors by whom the district was formed, for their approval, modification, or rejection.

Commissioners, duties of.

SEC. 5. Upon the adoption of a plan of protection, said board of supervisors shall appoint three disinterested persons, residing in any county in which some part of the district is situated, as commissioners, who shall, on being notified in writing of their appointment, by the clerk of such board of supervisors, proceed to view each forty-acre tract or fraction thereof, and each town lot or parcel of land within the district, and levy and fix against each such sum for protection purposes in proportion to the whole expense and to the benefits to be derived from such proposed works of protection, in gold coin of the United States, and report to said board of supervisors as follows:

1. A description by the smallest legal subdivisions or natural boundaries of each tract, and number and block of each town lot in the district;

2. The number of acres in each tract or parcel of land, and the size of each town lot;

3. The names of the owners of each tract or lot, if known; and if not, as unknown;

4. The sum levied or fixed against each tract, parcel of land, or town lot.

Said commissioners shall be entitled to receive a sum not to exceed five dollars per day each while performing said duties, to be paid out of the proper protection fund.

Report of commissioners.

SEC. 6. Upon the filing of the report of the commissioners, as aforesaid, with the clerk of the board of supervisors, said board shall give notice, in some newspaper printed in the county, that they will, upon a day named in such notice, which day shall not be less than five days from the date of publication, meet and review, correct, and adopt said report; and upon the day thus fixed, the board of supervisors shall meet, review, correct, and adopt said report; and their decisions in the premises shall be final. The sums thus fixed against each tract, parcel of land, or town lot, in said report as adopted, shall be the basis of all assessments within the district for a term of ten years thereafter, unless legally changed as hereinafter provided. The words "tract or parcel of land" shall include all railroad beds within the district.

Assessments.

SEC. 7. The board of trustees of any protection district formed under this act shall have power to levy assessments on or against each tract or parcel of land or town lot in the approved report of the commissioners for such district. On making such assessment, said trustees shall make a list of the sums assessed against each tract or parcel of land or town lot in the district, and file the same with the county treasurer of the county in which the district was organized; and from and after the filing thereof the charges against any tract or parcel of land or town lot contained therein shall become a lien thereon; provided, that if any such land be situated in different counties, the trustees shall cause the same to be filed in each county where the land is situated.

Assessed list filed with county treasurer.

SEC. 8. The list thus prepared and filed with the county treasurer shall remain in his office for thirty days, or longer if so ordered by the board of trustees; and during the time it may so remain any person may pay the charges assessed against any tract, parcel of land, or town lot, to the treasurer, in United States gold coin, or warrants of the district, drawn by order of the trustees and signed by the auditor of the county. If in warrants, such warrants must be at once canceled by the treasurer.

Treasurer to publish notice of filing.

SEC. 9. Upon the filing of said list with the county treasurer, he shall give notice, by publication in a newspaper printed in the county, that the assessment list of District No. —— has been filed in his office, with the date of filing; that the amounts entered thereon are due and payable; that if not paid on or before the first Monday in January next ensuing the same will become delinquent, and will be turned over to the tax collector of the county for collection. He shall note on said lists all assessments paid, and shall, on the day above named, turn said list over to the tax collector of the county, who shall proceed to collect such delinquent assessments, with five per cent added thereon, and pay the same, including the five per cent so collected, over to the county treasurer, in the same manner as state and county taxes are collected and paid over. All moneys paid into the county treasury for protection purposes, for any district organized under this act, including said five per cent, shall be placed by the treasurer to the credit of such district, and shall be paid out only for the benefit of such district, upon warrants drawn according to law.

Money, how paid.

SEC. 10. No money shall be paid out of any funds belonging to any protection district contemplated in this act, except upon the order of the board of the

particular district, and upon warrants signed by the county auditor; said warrants, in order to draw interest, must be presented to the county treasurer and by him registered, and they shall bear interest from the date of such registration, and shall be paid in the order of their registration.

Compensation of treasurer, auditor, and tax collector.

SEC. 11. The county treasurer shall be entitled to receive one per cent of the amount received by him for assessments paid under this act, and the auditor and tax collector such sums as may be allowed by law for such services, to be paid out of the funds of the district as other claims against the same are paid. The district attorney is hereby required, when called upon, to act as legal adviser of all boards of trustees in his county, without compensation other than his regular salary.

Effect of act.

SEC. 12. Nothing in this act affects the provisions of any statute in relation to levee districts now in force; but whenever any levee district formed under such statute desires to reorganize under this act, or whenever any such statute is repealed, or becomes null and void, in either event a levee district may bring itself within the provisions of this act by its trustees notifying, in writing, the board of supervisors that they have elected so to do. In all such cases the original district officers shall continue in office until the new organization is perfected. When so perfected, the trustees thereof shall be deemed the successors and legal representatives of the district so reorganized and consolidated; provided, that when a levee district is without trustees, the same may be placed under and within the provisions of this act by said board of supervisors, whenever there shall be presented to them a petition signed by persons holding a majority of the acres in said district asking to be so placed; provided, also, that any such reorganization shall in no manner impair any obligation heretofore legally incurred by such reorganized levee district.

Districts endangered by overflow.

SEC. 13. Should any protection district formed or organized under this act be endangered by overflow from any lands lying contiguous thereto, not embraced in any other district, the trustees of the district so endangered may petition the board of supervisors of the county in which the endangered district is situated, stating the cause of danger, and asking that such changes be made in the exterior boundaries of such endangered district as will enable it to protect itself from the actual or threatened injury. Notice of such petition shall be given as required in this act for the formation of districts, and upon a showing satisfactory to said board of supervisors they shall make such order in the premises as may seem to them just and proper. Should said board grant such a petition, in whole or in part, they shall make such changes as they may deem necessary; and if in doing so they make an addition of territory to the endangered district, the added territory shall become an integral part of said district, and the board shall appoint three commissioners to fix a basis of assessment, as provided in section five of this act. When the levees of a protection district formed under this or other acts are insufficient to protect such district from overflow, and thereby endanger the land embraced in a contiguous district, the trustees of the endangered district may present a petition to the board of supervisors setting forth the fact, and showing in what manner such insufficient levees or works endanger the district represented by the petitioners, and asking that the trustees of the former district be required to perfect its levees

so as to abate the threatened danger. Upon the filing of such petition with the clerk of the board said clerk shall notify, in writing, the trustees of the district complained of; the notice must set out the substance of the petition, and the relief asked for, and must require said trustee to show cause, on the day therein named, which shall not be less than thirty days from the date of the service to said board, why the petition should not be granted. If there be no trustees, then such notice shall be published not less than thirty days before the day of hearing the same, in the manner herein provided for the publication of notice for the formation of a district. If at the hearing of said petition the matter and things therein contained shall be proved to the satisfaction of the board, and they shall also be satisfied that the petitioners are entitled to the relief prayed for, they shall, if there are trustees of a district complained of, require them, by an order entered on the minutes of the board of supervisors, to perfect the levees of their district as aforesaid. A copy of such order shall be served on at least two of said trustees, and if such trustees shall fail to obey such order for the space of six months from the day they have notice thereof, said board are hereby empowered to execute said order by proceeding to perfect said levees, and for that purpose shall have all the powers which are conferred by this act upon the boards of trustees of protection districts. If there be no trustees of the district complained of, the board of supervisors are hereby made ex officio trustees thereof, with all the powers possessed by virtue of this act by the district trustees of each protection district, and shall retain such power until trustees are elected for such district in the manner in this act provided.

Appointment of new commissioners.

SEC. 15. The supervisors of any county in which the greater portion of any protection district, organized under this act, is situated shall, upon the presentation of a petition to them, signed by the owners of a majority of the acres in such district, asking for the appointment of a new commission to review and change the basis of assessment in such district, appoint such new commission, which shall be governed by section five of this act.

Compensation of trustees.

SEC. 16. The trustees of any district organized by authority of this act shall be entitled to receive each, for their services while actually employed in the business of the district, a sum not exceeding three dollars per day, to be paid out of the funds of their particular district.

SEC. 17. This act shall take effect immediately.

An Act to provide a system of irrigation, promote rapid drainage, and improve the navigation of the Sacramento and San Joaquin rivers.

[Approved March 29, 1878; 1877–8, 634.]

State engineer, office created.

SECTION 1. The office of state engineer is hereby created, which shall, before the first day of May, eighteen hundred and seventy-eight (1878), be filled by appointment by the governor of the state, for a term of two years.

Compensation.

SEC. 2. The compensation of the state engineer shall be six thousand dollars per year.

Duty of engineer.

SEC. 3. The duty of the state engineer shall be, under the direction of the governor, to investigate the problems of irrigation of the plains, the condition

and capacity of the great drainage lines of the state, and the improvement of the navigation of rivers.

What to be ascertained by state engineer.

SEC. 4. In order to carry out the purpose specified in section three, it shall be required of the state engineer to ascertain as nearly as possible the following-named facts, and to express opinions as is hereby required:

1. To ascertain the present water-carrying capacity of the Sacramento and San Joaquin rivers in the different sections which are liable to overflow.

2. Whether the carrying capacity can be increased, and if so, by what means and at what cost.

3. The maximum quantity of water which may reasonably be expected to present itself, on any day, at the head of any of the sections of the rivers as before mentioned.

4. Whether it is possible to make the rivers carry the maximum quantity thus ascertained, and if not, to suggest such other measures as may be judicious for the relief of the rivers and the protection of adjoining lands, and to give detailed estimates of the cost of the suggested works.

5. To ascertain whether there has been any change in the height of beds of the navigable rivers of the state, and if so, to determine as nearly as may be the extent of this change, and the cause or causes to which it is due, and whether change is now taking place in the height of the beds of the rivers, and if so, what legislation, if any, will be effectual in preventing the rise of the beds, or in diminishing the rate of rise.

6. To ascertain the effect of any change in the bottom of the rivers, or the carrying capacity, and the height of floods in the rivers.

7. To ascertain the position and acreage of all lands in the valleys of the state, which are now or may be in the future in need of irrigation; to divide these lands into their natural districts; to ascertain the water source or sources from which each district may be most conveniently irrigated; to ascertain the quantity of water which these sources can supply in different years for irrigation; the length of time in each year during which these sources will supply sufficient water for irrigation; make studies of the best means for irrigating each district, and give his opinion and advice to such parties as may be engaged in irrigating a district, or who may be about to undertake the irrigation of a district, and for this advice no compensation shall be received from the parties to whom the advice is given.

8. The state engineer shall also inquire into the relation which hydraulic mining bears to the navigation of the rivers, and to their carrying capacity; to inquire into the question of the flow of débris from the mines into the water-courses of the state; to ascertain the amount and value of agricultural lands and improvements which have been covered up or injured by the overflow or deposit of débris coming from the hydraulic and other mines in the Sacramento valley, and to devise a plan whereby the injuries caused thereby can be averted without interfering with the working of such mines.

9. In addition to making these inquiries, the state engineer shall make such other investigations as may appear to him to be necessary, and approved by the governor, for the proper and complete solution of the problem stated in section three.

10. Inasmuch as these inquiries involve a broad and scientific treatment of the physical facts of the water system of the state, and as their study may

properly be divided, the governor is authorized to employ, for the purpose of advising and assisting the state engineer, two consulting engineers acquainted with hydraulic engineering, and of good standing in their profession, who shall receive not exceeding three thousand dollars a year each, and who shall join with the state engineer in making his final report.

11. In addition to the compensation herein stated, the engineers shall be entitled to their actual reasonable expenses of travel while engaged on the duties prescribed by this act.

12. The state engineer shall make monthly reports, at the close of each calendar month, of the operations of his office in the preceding month, and shall therein mention the operations contemplated in the next ensuing month. On the first of October of each year he shall make to the governor an annual report of operations during the past year.

13. The governor is authorized to appoint a secretary, who shall keep the records of the office of the state engineer, and who shall, under the direction of the engineer, and subject to such regulations as the controller of state shall establish, make the disbursements required by this act. The secretary shall be required to give bonds for the faithful disbursements of the money, in the sum of ten thousand dollars, and shall receive a compensation of twenty-four hundred dollars per annum.

14. The state engineer may employ such assistants in the execution of his duties as may from time to time be required, the number of persons and the rates of compensation being approved by the governor.

15. The office of state engineer shall be in the state capitol building.

16. For the purposes of this act, the sum of one hundred thousand dollars, or so much of it as may be necessary to cover the expenses of the operations of two years, beginning May first, eighteen hundred and seventy-eight (1878), is hereby appropriated.

17. On January first, eighteen hundred and eighty (1880), the state engineer shall report to the legislature a full statement and history of his operations up to that date, the condition of the inquiry, the important facts that have been ascertained, either accurately or approximately, and the deductions or recommendations which have been justified by the inquiry in regard to the principles which ought to govern in the irrigation of lands, and in relief of the rivers when in flood, with such practical recommendations as he may see fit.

SEC. 5. This act shall be in force from and after its passage.

An Act to promote drainage.

[Approved April 23, 1880; 1880, 123 (Ban. ed. 389).]

Board of drainage commissioners.

SECTION 1. The governor, surveyor-general, and state engineer shall be ex officio members of and constitute a board of drainage commissioners to divide the state into several drainage districts, and organize the same as hereinafter provided. The governor shall be president of the board, and the office of the board shall be in the state engineer's office at the state capitol. The secretary to the state engineer shall be secretary of the board.

Report of state engineer.

SEC. 2. Within thirty days after the passage of this act, or as soon thereafter as may be practicable, the state engineer shall submit to said board a report or reports containing the result of his investigations as to drainage, having in view the control of débris from mining and other operations, the improvement

and rectification of river channels, the erection of embankments or dikes necessary for the protection of lands, towns, or cities from inundation. He shall also make special examinations with reference to the division of the state into several drainage districts, each of which shall include a territory drained by one natural system of drainage, and shall report to the board of drainage commissioners the result of his examinations, and shall from time to time propose boundaries for such districts and recommend their formation.

Board to consider the report.

SEC. 3. After the state engineer has reported the boundaries and recommended the formation of one or more drainage districts, the board shall proceed to consider the same, and may adopt, amend, or reject said report; but if adopted by them, either in the original form or amended, they shall, by resolution entered upon the record of their proceedings, declare the said territory to be, and the same shall thereupon become, a drainage district, and shall be known as drainage district number one, two, or three, etc., as the case may be, numbering the districts in the order in which they are formed; and they shall record, in a book to be kept for that purpose, the boundaries, which shall be clearly defined, with map accompanying of each separate district, its number, and date of its formation, and shall file for record with the recorder of each county embraced, or in part embraced, in the district, a copy of the same, which shall be deemed sufficient notice of the formation of said district to all county officers, and to all parties concerned, that the said district has been formed.

Board of directors—Term—Bond—Report.

SEC. 4. Within ten days after the organization of any drainage district the governor shall appoint three persons, residents of the district, who shall constitute a board of directors for the district so formed. They shall hold office for four years [unless sooner removed for cause by the governor], and until their successors are appointed and qualified. They shall organize by electing one of their number president, and shall take the usual oath of office; and shall each give a bond in the sum of twenty-five thousand dollars for the faithful performance of his duties, to be approved by some superior judge of the district, and filed with the board of drainage commissioners. They shall, on or before the first day of January of each year, report to the governor all their proceedings, showing the amount of work done and amount of money they have expended. The governor shall transmit the same to the legislature.

Secretary—Assistant engineer.

SEC. 5. The board of directors shall appoint a secretary, and have an office in the district. The secretary shall receive a salary to be fixed by the directors, not exceeding one hundred dollars per month, payable out of the construction fund of the district; and his term of office shall be at the pleasure of the board of directors of such district. (They shall also appoint an assistant engineer, who shall be styled resident engineer, and whose duties are hereinafter stated.)

Vacancies—Salary.

SEC. 6. The governor shall fill all vacancies that may occur in the board of directors, and each director shall receive a salary of one hundred dollars per month, payable monthly out of the construction fund of the district.

Specifications, plans, etc.

SEC. 7. After the formation of any territory into a drainage district, the state engineer, as soon as practicable after proper surveys have been made, shall

submit to the board of directors of the district plans, specifications, and estimates of the cost of the works necessary in said district, in order to secure a proper system of drainage therefor. The report shall be accompanied by the concurring or dissenting opinion of the consulting engineer.

Board of directors may adopt, etc.

SEC. 8. After the report of the state engineer, as aforesaid, giving plans, specifications, and estimates of the cost of the works, or any modifications or changes thereof, are made to the board of directors of the district, the board shall adopt, amend, or reject the whole or any portion of such plans, or may refer them back to the state engineer for further report.

Bids.

SEC. 9. After the adoption of the plans and specifications of the work to be done in the district, the board of directors shall advertise for thirty days, in three newspapers of general circulation published therein, for bids for the construction of all or any portion of the works embraced in said plans; the said notice shall state that the plans and specifications of said works are on file in the office of the board of directors of the district, and can there be examined by any person who may so desire; and shall also state that it will be unlawful for any contractor to employ any Chinese or Mongolians in the construction of such works, and state generally the terms and time in which the work shall be constructed, and that the right to reject any and all bids is reserved by said board; and no material used in the construction of such works shall be purchased from any contractor or manufacturer who either directly or indirectly employs any Chinese or Mongolian labor.

Contracts.

SEC. 10. All contracts shall be awarded to the lowest responsible bidder (if his bid is not deemed by the board too high), and the contractor shall give a good and sufficient bond in not less than twenty-five per cent of the estimated cost of the work contracted for; the bond, both as to its amount and the sureties thereon, shall be subject to the approval of the board of directors of the district, and when so approved shall be filed in the office of said board. Any members of the board of drainage commissioners, or the state engineer, or consulting or resident engineer, or any superintendent of said works, or any employee of the board of drainage commissioners, any member of the board of directors of any drainage district, or any employee thereof, or of the state engineer's department, who shall be interested in any contract for the construction of any such works in any drainage district, shall be guilty of a felony. If, however, any emergency shall arise rendering it necessary, in the judgment of said board of directors, concurred in by the state board of drainage commissioners, for the protection of works already completed, that immediate repairs or work should be done, the said directors shall have the power to do such work or repairs in the manner which to them seems most advisable.

Condemnation.

SEC. 11. The board of directors of the district may condemn the right of way for any work necessary for the purpose of the drainage of the district; may purchase or condemn material necessary for the work; may join, connect with, enlarge, or strengthen any works already constructed, and may condemn such lands as may be by them deemed necessary for reservoirs for storing débris from the mines, whether the same be within or without the boundaries of the district, and may provide for connecting the system of drainage of one district

with that of another, or for several districts; and it is hereby declared that the use of the property, such as right of way and lands which may be condemned, taken, or appropriated under the provisions of this act, is a public use, and that such appropriation is for the public benefit (provided, that they shall not have the right or power to purchase or condemn any levee or levees).

Same.

SEC. 12. Whenever the board of directors of any district cannot procure from the owner or owners thereof, without purchase, the right of way or material needed for the construction of levees or reservoirs (for the storage of débris), or procure the consent to join or connect with any existing works, or procure lands necessary for the construction and the completion of the system or plan adopted, the said board of directors may, in the name of the district, proceed to condemn the same under the provisions of Title VII., Part III., of the Code of Civil Procedure, and amendments thereto, which are now existing or may hereafter be made; provided, that cities and towns having levees shall have and retain the exclusive management and control thereof, subject to the right of the district to connect therewith as herein provided.

State engineer to have charge—Resident engineer.

SEC. 13. All works carried on under the provisions of this act shall be executed under the direction of the state engineer (who shall be appointed by the governor), and an assistant for each drainage district, who shall be styled resident engineer, and whose salary shall be fixed by the board of directors of the district, but shall not exceed two hundred dollars per month for each month of actual service. All work shall be done under the immediate supervision of the resident engineer and board of directors of the district, and no work shall be paid for until accepted by such resident engineer and board of directors, and approved by the state engineer.

Construction fund.

SEC. 14. The costs of the works contemplated in this act, embracing all contracts, purchases, or condemnations of property authorized under it, and all proper salaries and incidental expenses, shall be paid out of the "construction fund" of the drainage district for which such works may be constructed. Proper vouchers, in duplicate, for all such expenditures, shall be certified to by the resident engineer of the district, approved by the state engineer, and submitted to the board of directors at their regular meetings, who shall thereupon audit and allow all just and proper claims, and certify the original voucher for the same to the state controller. The controller shall thereupon draw his warrant upon the state treasurer for the amount thus certified, payable out of the "construction fund" of the proper district, or out of the "state construction fund," as the case may be. The provisions of law requiring claims to be approved by the state board of examiners, before a warrant shall be drawn by the controller therefor, shall not be applicable to claims presented under the provisions of this act.

Funds, how provided.

SEC. 15. To provide funds to pay the construction of the systems of works contemplated by this act, and all expenses connected therewith, the assessors of the several counties embraced in whole or in part in any drainage district shall be ex officio assessors of the district for the portion of said district included in their respective counties; and each such assessor shall annually assess and make a duplicate assessment-book of all property in that portion of the

county of which he is assessor, embraced within such drainage district, and shall deliver the said duplicate assessment-book at the same time and in the same manner and to the same officer or board that he delivers the assessment-book made for the purposes of state and county taxation; and the assessment so made shall be equalized at the same time and by the same officers or boards as assessments made for state and county taxes are equalized. The said duplicate assessment-book shall be treated in all respects by the several state and county officers the same as the assessment-book made for state and county purposes. When the said assessment has been finally equalized by the proper authority, as hereinbefore provided, it shall be the duty of the auditor of the county, in whole or in part embraced in any drainage district, on or before the first day of October of each year, to forward by mail or express, to the board of directors of such district, at their office, a statement showing the total value of all property embraced in said duplicate assessment-book, after the same has been finally equalized, as before stated.

Tax levy.

SEC. 16. The board of directors of each drainage district must, on some day in the month of October of each year, levy a tax upon all the property in the district, of one twentieth of one per cent on the value of said property. Immediately after the levy of said tax, the board of directors levying the same shall at once notify the auditor of each county in which any portion of any drainage district is embraced of the tax and rate so levied; and each of said auditors shall compute and enter upon the duplicate assessment-book of each district the respective sums to be collected, in the same manner that he makes computation and entry upon the assessment-book for state and county tax purposes, and shall turn the same over to the tax collector at the same time and in the same manner that he does the assessment roll for state and county purposes. The tax collector shall collect such tax or taxes at the same time and in the same manner that they collect state and county taxes; and all laws for the enforcement and collection of state and county taxes now in force, or hereafter to be enacted, shall be applicable to the enforcement and collection of all taxes in this act provided for. The tax collector shall pay the same over to the county treasurer at the same time and in the same manner as state and county taxes are paid. The county treasurer shall pay the same over to the state treasurer at the same time and in the same manner as state taxes are paid, and the state treasurer shall place the same to the credit of a fund to be known as the "construction fund of drainage district number one," "two," "three," etc., as the case may be.

Same.

SEC. 17. In case any drainage district is organized after the time provided by law for making assessments for state and county puposes, then the board of directors of such district shall, if they deem it advisable so to do, notify the auditor or auditors of the county or counties embraced in whole or in part in such district; and thereupon each of said auditors shall make a copy from the assessment-book of that county for state and county taxation, as finally corrected and equalized by the proper authority, of all the property in that county embraced in said district, and shall immediately thereafter prepare, and forward by mail or express to said directors, a statement showing the total value of the property thus assessed and included in said district. The said directors must thereupon, and on some day before the first day of November of that year, levy

a tax upon all the property in the district, of one twentieth (1-20th) of one per cent of the value of said property; and immediately thereafter they must notify the auditor or auditors of the county or counties embraced in whole or in part in the district of the tax and rate so levied. The auditor of each county so notified shall thereupon compute, and enter upon said copy of the assessment-book, this tax, in the same manner that he does taxes for state and county purposes. The said copy shall then be turned over to the tax collector of the county, and the taxes embraced in the same shall be collected, and finally paid over to the state treasurer, in the same manner and at the same times as stated in the preceding section of this act.

Compensation of auditors and assessors.

SEC. 18. The auditors and assessors of the counties embraced in any drainage district shall be allowed a reasonable compensation for making the duplicate assessment-books, also the auditors for making a copy of the assessment-book; and these claims for such compensation shall be audited and allowed by the directors of such drainage district, and shall be paid in the same manner as other claims against the district.

Hydraulic mine owners to render statement to assessor.

SEC. 19. The owner or owners, or the managing agent, of every hydraulic mine, or any mine using water to wash the earth or ores for mining purposes, which mine may be embraced in whole or in part within any drainage district to be formed or organized under this act, and of all mines the waters from which carrying slickens, sand, or débris therefrom run into any such district, shall, on or before the first day of July, A. D. eighteen hundred and eighty, and every year thereafter, at the time required for rendering a statement to the assessor for the purpose of assessing for state and county taxes, render to the assessor of the county in which the mine is located a sworn statement showing the number of miners' inches of water (of twenty-four hours' run) used by the mine of which he is in whole or in part owner, or the managing agent, for the preceding year ending on the first day of March next preceding the rendition of such statement. The statement shall include also the name and description of the mine. Upon the receipt of such statement from the owner or managing agent of such mines, the assessor shall enter the same in a separate column in the duplicate assessment-book provided for in this act, so that it will show the number of miners' inches of water (of each twenty-four hours' run) used by each of such mines within the county for which he is assessor.

Assessment on hydraulic mines.

SEC. 20. The board of directors shall, at the same time in October of each year that they levy the tax hereinbefore provided for, levy an assessment upon all hydraulic mines, and upon all mines washing earth or ores with water running into the district, of one half of one cent for each miners' inch of water of each twenty-four hours' run, used during such year, and shall notify the auditor of each county embraced in whole or in part in the district, of the amount so levied, and he shall compute and enter upon the duplicate assessment-book the respective sums to be collected from the respective mines; and the tax collector shall collect said assessment at the same time and in the same manner that they collect state and county taxes; and the money so collected shall be paid over in the same manner and at the same time as herein provided for the collection of taxes, and the state treasurer shall place the same to the credit of the "construction fund" of the proper district.

State engineer to make map of unreclaimed swamp or overflowed land.

SEC. 21. Within a reasonable time after the organization of a drainage district, the state engineer shall make a map of all the unreclaimed swamp or overflowed land in the district rendered unfit for cultivation by reason of being swamp or overflowed and not reclaimed, and shall also prepare a list of such lands, describing them by legal subdivisions, and shall file both said map and said list in the office of the directors of the district. Within three months after the filing of this list the directors of the district shall give notice for thirty days in three newspapers of general circulation published in the district, that they will hear evidence, on a day to be named in said notice, for the purpose of correcting errors or omissions in said list. After hearing such testimony as may be offered, they shall correct said list in accordance with the facts.

Directors to prepare list of reclaimed lands.

SEC. 22. On or before the first day of March in each year the directors of any drainage district in which any of the lands described in the list provided for in the preceding section have been reclaimed, by reason of the construction of any of the works contemplated by this act, shall prepare a list or lists of all such lands so reclaimed situate in such district. The list shall contain a description by legal subdivisions, or other intelligent description, of each tract so reclaimed; the name of the owner of each tract; and if unknown, then that fact; the number of acres in each tract; and shall, on or before said date, deliver to the assessor of the county or counties in which any portion of said lands so reclaimed is situated a certified copy of said list so far as the same relates to the lands situated in such county. Whereupon such assessor shall enter the same upon the duplicate assessment-book provided for in this act.

Assessment.

SEC. 23. After any land has been reclaimed, and lists filed with the assessor, the board of directors shall assess the value of the reclamation to each tract of said land, not to exceed three dollars per acre, which shall be payable in six equal payments; provided, no one owner shall be liable for the payment due from any other owner. The directors shall, before the first day of October of each year, notify the auditors of the counties in which the land is situated the amount of assessment per acre that is to be collected on each tract of land, and the auditor shall compute the same and enter the amount in a separate column in the duplicate assessment-book prepared for the district, and the tax collector shall collect said assessment at the same time and in the same manner as he collects state and county taxes; and the money so collected shall be turned over to the county treasurer and paid by him to the state treasurer, the same as other moneys collected under the provisions of this act. The state treasurer shall place the same to the credit of the "construction fund" of the district to which it belongs.

State tax.

SEC. 24. There shall be levied in the year eighteen hundred and eighty, and each year thereafter, by the same officers, at the same time and in the same manner that other state taxes are levied, a tax of one twentieth of one per cent on all the taxable property in the state in addition to other state taxes. Said tax must be collected by the same officers at the same time, and paid over at the same time, that other state taxes are collected and paid over. The state treasurer shall place all moneys received by him on account of such tax to the credit of a fund, to be known as the "state drainage construction fund."

The state drainage construction fund must be used and drawn upon in the same manner and for the same purposes as the "construction fund" of a drainage district; provided, that all moneys raised under the provisions of this act shall be used exclusively for the construction of dams for impounding the débris from the mines hereinbefore specified, and for the improvement and ratification of river channels in which said débris flows within the drainage districts to be formed under the provisions of this act, at such points thereof as shall be designated by the state engineer, or deemed necessary by the board of directors of such drainage district.

Duty of state treasurer.

SEC. 25. The state treasurer is hereby authorized and required to pay all warrants drawn by the state controller upon the "construction fund" of any drainage district, or upon the "state drainage construction fund," out of such fund; provided, that if there be no money in the "state drainage construction fund" to meet the payment of any warrant on that fund, the state treasurer shall pay such warrants out of any other money in the state treasury not otherwise appropriated, but not exceeding in the aggregate the amount, or the balance of the amount, to be paid into the "state drainage construction fund," under this act, for the current year, upon an estimate based upon the assessed value of all the taxable property in the state for the preceding year; and provided further, that no indebtedness shall be created against either of said funds for any one year in excess of the amount provided to be raised by the tax levy for said year for said funds; said levy to be estimated upon the assessment roll for the previous year; and when the state tax in this act provided for is collected and paid into the treasury, the money so paid shall be repaid from the "state drainage construction fund."

Responsibility of officers.

SEC. 26. All officers acting under the provisions of this act, and their bondsmen, are hereby made responsible for the collection, safe-keeping, and proper accounting of the taxes and funds intrusted to them, in the manner herein provided, in accordance with the laws regulating their duties and responsibilities in connection with state and county funds.

Construction of act.

SEC. 27. Nothing in this act shall be construed in such a manner as to invalidate the indebtedness of any reclamation or levee district, or any assessment levied therein, or to affect in any manner whatever the laws in force in relation to reclamation and levee districts; nor shall any levees be condemned or purchased under the provisions of this act.

Chinese not to be employed.

SEC. 28. No Chinese or Mongolians shall be employed in any capacity whatever on any work to be done in pursuance of the provisions of this act.

SEC. 29. This act shall take effect and be in force from and after its passage.

An Act to appropriate money to pay the indebtedness incurred under an act entitled "An act to promote drainage," approved April 23, 1880.

[Approved March 10, 1885; 1885, 78.]

SECTION 1. The state treasurer is hereby authorized and required to pay all warrants outstanding and unpaid, in their order as drawn by the state controller, in accordance with "An act to promote drainage," approved April twenty-third, eighteen hundred and eighty, upon the construction fund of drainage

district number one, and all warrants drawn upon the state drainage construction fund, out of each fund respectively; provided, that if there is not money enough in said funds to pay all said warrants, then he shall pay the remainder of said warrants unpaid out of any money in the general fund not otherwise appropriated.

SEC. 2. The state controller is hereby authorized and required to draw his warrants for all claims against drainage district number one that have been heretofore audited and allowed by the state board of drainage directors; also, all claims against the state drainage construction fund that have been heretofore audited and allowed by the said state board of drainage directors; and the state treasurer is hereby authorized and required to pay the same out of any money in each fund respectively; provided, if there is not money enough in said fund to pay all of said warrants, then the state treasurer shall pay the remainder of said warrants unpaid out of any money in the general fund not otherwise appropriated.

SEC. 3. All persons having claims "unaudited by the state board of drainage directors," for work done or materials furnished under the provisions of "An act to promote drainage," approved April twenty-third, eighteen hundred and eighty, are authorized to present their claims to the state board of examiners. All claims so presented shall be itemized and verified by the claimant, his heirs or assigns. The state board of examiners shall audit and allow said claims, either in whole or in part, or reject the whole, as they may deem just and proper, and certify the amount so allowed to the state controller, who shall draw his warrant in favor of each claimant for the said amounts upon the state treasury. The state treasurer is authorized and required to pay the same out of any money in the general fund not otherwise appropriated; provided, that unaudited claims of ten thousand dollars only shall be allowed by the provisions of this section.

SEC. 4. The sum of forty-three thousand one hundred and eight dollars and twenty-six cents in the state treasury to the credit of the state drainage construction fund, and the sum of twenty-one thousand and forty-eight dollars and seventy-five cents in the state treasury to the credit of the construction fund of drainage district number one, and the sum of one hundred and ninety thousand dollars in the state treasury not otherwise appropriated, is hereby appropriated to pay the warrants mentioned in section one of this act, and those authorized to be drawn in sections two and three of this act.

SEC. 5. This act shall be in force and take effect from and after its passage.

An Act to promote drainage.

[Approved March 18, 1885; 1885, 204.]

Petition to adopt measures to drain lands.

SECTION 1. Whenever the owners of two thirds of any body of lands susceptible of one mode of drainage desire to drain the same, they may present to the board of supervisors of the county in which the lands, or the greater portion thereof, are situated, at a regular meeting of the board, a petition setting forth that they desire to adopt measures to drain the same, the description of the land, the number of acres in the whole district, and the number of acres in each tract, and the names of the owners thereof, and the names of three persons who may desire to serve as trustees for the first three months; the petition must be verified by the affidavit of one of the petitioners, and must be published for four weeks next preceding the hearing thereof, in some newspaper published in the county in which the lands are situated; or if there is no newspaper pub-

lished in the county, then it must be published in some newspaper having a general circulation in the county, and an affidavit of such publication must be filed with the petition.

District lying in different counties.

SEC. 2. When a district is situated partly in different counties, the trustees must, after the petition has been granted, forward a copy thereof to the clerk of the board of supervisors of any county in which any portion of the district may lie, and the board to which the same is forwarded must not allow another district to be formed within such district, unless with the consent of the trustees thereof.

Formation of district.

SEC. 3. If the board of supervisors find, upon the hearing of such petition, that the statements are correct, and that no land is improperly included in or excepted from the district, they must note their approval on the petition, which approval must be signed by the president and attested by the clerk, and from and after the approval the district is duly formed, and the persons named in the petition are the trustees for the first three months, and until their successors are appointed.

Recording petition.

SEC. 4. The petition must then be recorded by the county recorder.

By-laws.

SEC. 5. After the approval of the petition the petitioners may make such by-laws as they deem necessary for future appointment of trustees, and to effect the work of drainage, keep the same in repair and operation, and for the control and management thereof, by the votes or consent of the owners of a majority of the land in the district.

Signing and recording by-laws.

SEC. 6. The by-laws adopted must be signed by persons owning a majority of land in the district, and must be recorded by the county recorder.

Power of board.

SEC. 7. The board thus formed shall have power to elect one of their number president thereof, and to employ engineers to survey, plan, locate, and estimate the cost of the works necessary for drainage, and the land needed for right of way, including drains, canals, sluices, water-gates, embankments, and material for construction, and to construct, maintain, and keep in repair all works necessary to the object in view.

Plans and estimates.

SEC. 8. The board of trustees must report to the board of supervisors of the county, or if the district is situated in more than one county then to the board of supervisors of each county in which the district is situated, the plans of the work and estimates of the costs, together with the estimates of the incidental expenses of superintendence, repairs, etc.

Assessing expense.

SEC. 9. The board by which the district was formed must appoint three commissioners, disinterested persons residing in the county in which the district, or some part thereof, is situated, and such commissioners must view and assess upon the lands situated in the district a charge proportionate to the whole expense, and to the benefit which will result from such work, which charge must be collected and paid into the county treasury as hereinafter pro-

vided, and must be placed by the treasurer to the credit of the district, and paid out for the work of drainage upon the warrants of the trustees appointed by the board of supervisors of the county.

Warrants on the treasurer.

SEC. 10. The warrants drawn by the trustees must, after they are approved by the board of supervisors, be presented to the treasurer of the county, and if they are not paid on presentation, like indorsements must be made thereon, and they must be registered in like manner as county warrants.

Payments when district in different counties.

SEC. 11. If a district is situated partly in different counties the charges must be paid into the treasury of the county in which the particular tract may be situated.

Further assessment.

SEC. 12. If the original assessment is insufficient to provide for the complete drainage of the lands of the district, or if further assessments are from time to time required to provide for the protection, maintenance, and repairs of the works, the trustees must present to the board of supervisors by which the district was formed a statement of the work to be done and its estimated cost, and the board must make an order directing that the commissioners who made the original assessment, or other commissioners to be named in such order, to assess the amount of such estimated cost as a charge upon the lands in the district, which assessment must be made and collected in the same manner as the original assessment.

List of charges and of lands.

SEC. 13. The commissioners appointed by the board of supervisors must make a list of the charges assessed against each district of land, and the list must contain a description of each tract assessed, the number of acres in each tract, and the names of the owners in each tract, if known, and if unknown, the amount of charges assessed against each tract.

Filing list.

SEC. 14. The list so made must be filed with the county treasurer of the county, or if the district is partly situated in different counties, then the original list must be filed in the county first in order under alphabetical arrangement, and copies thereof, certified by the commissioners, must be filed with the treasurers of each of the other counties. From and after the filing of the list, or certified copies thereof, the charges assessed upon any tract of land in the county constitutes a lien thereon; and the list thus prepared must remain in the office of the treasurer for thirty days, or longer if ordered by the board of trustees; and during the time they so remain any person may pay the amount of the charges against any tract to the treasurer without costs; or if so ordered by the board of trustees, said payments may be by installments; and if at the end of thirty days, or of the longer period fixed by trustees, all of the charges, or all of any installments ordered by them, have not been paid, the treasurer must return the list to the district attorney, who must at once proceed by civil action to collect such charges.

Executing work.

SEC. 15. The work must be executed under the direction and in the manner prescribed by the board of trustees.

Account of expenditures.

SEC. 16. The board must keep accurate accounts of all expenditures, which accounts, and all contracts that may be made by them, are open to the inspection of the board of supervisors, and every person interested.

Purchases by trustees.

SEC. 17. The trustees may acquire, by purchase, all property necessary to carry out and maintain the system of drainage provided for.

Eminent domain.

SEC. 18. The trustees may acquire, by condemnation, the right of way for canals, drains, embankments, and other works necessary, and may take materials for the construction, maintenance, and repair thereof from lands outside of as well as in the limits of said district.

Same.

SEC. 19. The provisions of Title VII., Part III., of the Code of Civil Procedure are applicable to, and condemnation herein provided for must be made thereinunder.

Drainage by owners.

SEC. 20. Whenever any district susceptible of one mode of drainage, entirely owned by parties who desire to drain the same, and to manage such drainage without the intervention of trustees, of the establishment of by-laws, they may file the petition provided for in sections one and two, and must state therein that they intend to undertake such drainage on their own responsibility. If the petition is granted, the owners of the land have all the rights, immunities, and privileges granted to boards of trustees, and in all proceedings the names of owners may be used instead of the names of trustees.

SEC. 21. This act shall take effect upon its passage.

EDUCATION.

See COLLEGES.

An Act to advance learning, the arts and sciences, and to promote the public welfare, by providing for the conveyance, holding, and protection of property, and the creation of trusts for the founding, endowment, erection, and maintenance within this state of universities, colleges, schools, seminaries of learning, mechanical institutes, museums, and galleries of art.

[Approved March 9, 1885; 1885, 49.]

Construction of act.

SECTION 1. The provisions of this act shall be liberally construed with a view to effect its objects and promote its purposes; and in the construction thereof the singular number shall be deemed to include the plural, and the plural shall be deemed to include the singular number, and the masculine gender shall be deemed to include the feminine.

Grant.

SEC. 2. Any person desiring, in his life-time, to promote the public welfare by founding, endowing, and having maintained, within this state, a university, college, school, seminary of learning, mechanical institute, museum, or gallery of art, or any or all thereof, may, to that end and for such purpose, by grant in writing, convey to a trustee, or to any number of trustees named in such grant, and to their successors, any property, real or personal, belonging to such person, and situated or being within this state; provided, that if any such per-

son be married, and the property be community property, then both husband and wife must join in such grant.

Requisites.

SEC. 3. The person making such grant may therein designate:

1. The nature, object, and purposes of the institution or institutions to be founded, endowed, and maintained;

2. The name by which it or they shall be known;

3. The powers and duties of the trustees, and the manner in which they shall account, and to whom, if accounting be required; but such powers and duties shall not be held to be exclusive of other powers and duties which may be necessary to enable such trustees to fully carry out the objects of such grant;

4. The mode and manner, and by whom, the successors to the trustee or trustees named in the grant are to be appointed;

5. Such rules and regulations for the management of the property conveyed as the grantor may elect to prescribe; but such rules shall, unless the grantor otherwise prescribe, be deemed advisory only, and shall not preclude such trustees from making such changes as new conditions may from time to time require;

6. The place or places where and the time when the buildings necessary and proper for the institution or institutions shall be erected, and the character and extent thereof: The person making such grant may therein provide for all other things necessary and proper to carry out the purposes thereof, and especially may such person provide for the trades and professions which shall be taught in such institutions, and the terms upon which deserving scholars of the public and private schools of the various counties of this state may be admitted to all the privileges of such institutions, as a reward for meritorious conduct and good scholarship; and also for maintaining free scholarships for children of persons who have rendered service to or who have died in the service of this state; and also for maintaining free scholarships for children of mechanics, tradesmen, and laborers, who have died without leaving means sufficient to give such children a practical education, fitting them for the useful trades or arts; and also the terms and conditions upon which students in the public and private schools, and other deserving persons, may, without cost to themselves, attend the lectures of any university established; and also the terms and conditions upon which the museums, and art galleries, and conservatories of music, connected with any such institution, shall be open to all deserving persons without charge, and without their becoming students of the institution.

Actions by trustees.

SEC. 4. The trustee or trustees named in such grant, and their successors, may, in the name of the institution or institutions, as designated in such grant, sue and defend, in relation to the trust property, and in relation to all matters affecting the institution or institutions endowed and established by such grant.

Grantor as trustee.

SEC. 5. The person making such grant, by a provision therein, may elect, in relation to the property conveyed, and in relation to the erection, maintenance, and management of such institution or institutions, to perform, during his life, all the duties and exercise all the powers which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees therein named. If the person making such grant, and making the election aforesaid, be a married person, such person may further provide that if the wife of such person survive him,

then such wife, during her life, may, in relation to the property conveyed, and in relation to the erection, maintenance, and management of such institution or institutions, perform all the duties and exercise all the powers which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees therein named; and in all such cases the powers and duties conferred and imposed by such grant upon the trustee or trustees therein named shall be exercised and performed by the person making such grant, or by his wife, during his or her life, as the case may be; provided, however, that upon the death of such person, or his surviving wife, as the case may be, such powers and duties shall devolve upon and shall be exercised by the trustees named in the grant, and their successors.

Amending grant.

SEC. 6. The person making such grant may therein reserve the right to alter, amend, or modify the terms and conditions thereof, and the trusts therein created, in respect to any of the matters mentioned or referred to in subdivisions one to six, inclusive, of section two hereof; and may also therein reserve the right, during the life of such person or persons, of absolute dominion over the personal property conveyed, and also over the rents, issues, and profits of the real property conveyed, without liability to account therefor in any manner whatever, and without any liability over against the estate of such person; and if any such person be married, such person may, in said grant, further provide that if his wife survive him, then such wife, during her life, may have the same absolute dominion over such personal property, and such rents, issues, and profits, without liability to account therefor in any manner whatever, and without liability over against the estate of either of the spouses.

Custody of minors.

SEC. 7. The person making such grant may therein provide that the trustees named in the grant, and their successors, may, in the name of the institution or institutions, become the custodian of the person of minors, and when any such provision is made in a grant, the trustees and their successors may take such custody and control in the manner and for the time and in accordance with the provisions of sections two hundred and sixty-four to two hundred and seventy-six, inclusive, of the Civil Code of the state of California.

Execution of grant.

SEC. 8. Any such grant may be executed, acknowledged, and recorded in the same manner as is now provided by law for the execution, acknowledgment, and recording of grants of real property.

Annulling grant.

SEC. 9. No suit, action, or proceeding shall be commenced or maintained by any person to set aside, annul, or affect said conveyance, or to affect the title to the property conveyed, or the right to the possession, or to the rents, issues, and profits thereof, unless the same be commenced within two years after the date of filing such grant for record; nor shall any defense be made to any suit, action, or proceedings commenced by the trustee or trustees named in said grant, or their successors, privies, or persons holding under them, which defense involves the legality of said grant, or affects the title to the property thereby conveyed, or the right to the possession, or the rents, issues, and profits thereof, unless such defense is made in a suit, action, or proceeding commenced within two years after such grant shall have been filed for record.

Exemption from execution.

SEC. 10. The property conveyed by such grant shall not, after a lapse of two years from the date of the filing for record of the grant, be subject to forced sale under execution, or judicial proceedings of any kind, against the grantor or his privies, unless the action under which the execution shall be issued, or the proceedings under which the sale shall be ordered, shall have been commenced within two years after such grant shall have been filed for record. Nor shall such property be subject to execution or forced sale under any judgment obtained in any proceedings instituted within said two years, if there be other property of the grantor subject to execution or forced sale sufficient to satisfy such judgment; provided, nothing in this section contained shall be construed to affect mechanics' or laborers' liens.

Bequest to state.

SEC. 11. Any person or persons making any such grant may, at any time thereafter, by last will or testament, devise and bequeath to the state of California all or any of the property, real and personal, mentioned in such grant, or in any supplemental grant, and such devise or bequest shall only take effect in case, from any cause whatever, the grant shall be annulled or set aside, or the trusts therein declared shall for any reason fail. Such devise and bequest is hereby permitted to be made by way of assurance that the wishes of the grantor or grantors shall be carried out, and in the faith that the state, in case it succeeds to the property, or any part thereof, will, to the extent and value of such property, carry out, in respect to the objects and purposes of any such grant, all the wishes and intentions of the grantor or grantors; provided, that no wish, direction, act, or condition expressed, made, or given by any grantor or grantors, under or by virtue of this act, as to religious instruction to be given in such school, college, seminary, mechanical institute, museum, or gallery of art, or in respect to the exercise of religious belief, on the part of any pupil or pupils of such school or institution of learning, shall be binding upon the state; nor shall the state enforce, or permit to be enforced or carried out, any such wish, direction, act, or condition.

SEC. 12. This act shall be in force from and after its passage.

EL DORADO COUNTY.

References to special and local acts.—Boundaries, 1850, 61; 1851, 176; 1863, 231, 349, 1863–4, 178.

Seat of justice, 1850, 61; 1851, 176; 1854, 74; 1856, 102; 1857, 33.

Authorizing funding of debt and providing for payment, 1852, 182; 1853, 25.

For relief of W. Rogers, sheriff, 1852, 266.

Concerning the securities of the late John H. Phillips, county treasurer, 1853, 31.

To ascertain indebtedness, 1853, 61.

Abolishing board of supervisors, 1853, 227.

Authorizing release of J. G. Bircham and sureties from recognizance and judgment, 1854, 40.

To submit question of removal of county seat to voters, 1854, 74; 1856, 102.

Attaching portion of El Dorado to Amador county, 1855, 113.

Incorporating town of El Dorado, 1855, 116; 1857, 7.

Reducing salary of county judge, 1857, 57.

Relating to and fixing residence of county judge, 1857, 196.

Submitting to people proposition to appropriate money for construction of wagon-road, 1857, 272; 1858, 50.

Separating office of collector of taxes from office of sheriff, 1857, 313.

Authorizing J. R. Munson to remove remains of deceased persons, 1858, 41.

Providing for construction of branch wagon-road, and authorizing board of supervisors to levy special tax for purpose, 1858, 48.

Concerning office of public administrator, 1858, 114, 297.

Extending term of office of supervisors, changing manner of election, defining duties and powers in certain cases, and establishing salaries, 1858, 115.

Incorporating town of Coloma, 1858, 207.

Fixing salary of district attorney, 1859, 59.

Fixing compensation of tax collector and his deputies, etc., 1859, 63; 1862, 130; 1863, 742.

Fixing amount of official bonds of county officers, 1859, 189.

Fixing terms of county court and court of sessions, 1859, 226; 1862, 61.

Regulating fees of certain officers, witnesses, and jurors, 1859, 362.

For relief of A. D. Park, late county treasurer, 1860, 25.

Authorizing board of supervisors to levy toll for crossing at Brockliss's bridge, 1860, 144; 1861, 30.

Concerning offices of sheriff, clerk, recorder, treasurer, collector, and assessor, and fixing their compensation, 1860, 349; 1861, 126; 1862, 129.

Authorizing Placerville Turnpike Company to have and maintain bridge across Webber creek, 1861, 91.

For relief of T. Wilcox, 1861, 258.

In relation to public roads and road fund, 1861, 519; 1862, 22, 161; 1863, 144.

Authorizing board of supervisors to purchase building for use of county, 1861, 534.

Granting right to construct and maintain bridge across south fork of American river at Coloma, 1862, 131.

For relief of W. D. Shirley and others, 1862, 44.

Granting to E. P. Bowman and associates right to construct and maintain toll-bridge across Cosumnes river, 1862, 131.

Authorizing board of supervisors to lease Sacramento and El Dorado wagon-road for term of years, 1862, 162.

Granting right to keep and maintain bridge across north fork of American river near Carrolton, 1862, 273.

Granting right to construct and maintain bridge across south fork of American river at Salmon Falls, 1862, 293.

Creating offices of township collectors and assessors, 1862, 429; 1863, 44; 1863–4, 466.

Granting to L. Lamb and associates right to construct and maintain toll-bridge across Cosumnes river, 1863, 40.

For relief of D. W. Standeford, deputy tax collector of foreign miners' licenses, 1863, 92.

Authorizing board of supervisors to subscribe two hundred thousand dollars to stock of Placerville and Sacramento Valley Railroad Company, etc., 1863, 122; 1863–4, 383.

Granting right to construct and maintain bridge across American river near Rattlesnake bar, 1863, 142.

Regulating fees of county clerk, 1863, 188.

Defining boundary line between this and Amador county, 1863, 231.

Providing for construction of wagon-road from Georgetown, via north side of Lake Bigler, to eastern boundary of state, 1863, 324.

Granting right of way over certain lands for construction of wagon-road (W. B. Carr's), 1863, 330.

Concerning United Order of Ancient Druids, 1863, 402.

Regulating fees of constables, 1863, 488.

Authorizing board of supervisors to lease branch wagon-road for term of years, 1863, 557.

Consolidating certain school districts in El Dorado and Sacramento counties, 1863, 568; 1871–2, 475.

Fixing terms of county court and probate court, 1863–4, 7.

Extending time for assessing real and personal property for fiscal year ending first of March, 1864; 1863–4, 26.

Fixing amount of official bond of public administrator, 1863–4, 36.

Authorizing board of supervisors to sell certain property ("county lot" in Placerville), 1863–4, 83.

Creating Alpine county, 1863–4, 178.

Authorizing board of supervisors to subscribe one hundred thousand dollars in addition to amount heretofore subscribed to stock of Placerville and Sacramento Valley Railroad Company, etc., 1863–4, 378.

Terms of county and probate courts, 1865–6, 84.

Compensation of supervisors, 1865–6, 85.

Act concerning offices, 1865–6, 127, 865; 1867–8, 43.

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EMIGRATION.

An Act to promote emigration from the state of California.

[Approved March 26, 1880; 1880, 15 (Ban. ed. 50).]

To promote emigration from the state.

SECTION 1. It shall be unlawful for the owners, officers, agents, or employees of any steamship company, sailing vessel, or railroad company, or firm or corporation, that may be engaged in this state in the transportation of passengers to and from any foreign port, to withhold or refuse any person or persons the right to purchase a passage ticket or tickets to any foreign country for the reason that he or they have not presented a certificate, card, or other document whatsoever showing that such person has paid in full, or in part, any or all dues, debts, or demands, or otherwise, or any sum whatsoever, to any society, company, corporation, association, or individual, or firm; and any person or corporation who shall violate the provisions of this section, or in pursuance of any agreement, oral or written, refuse to sell a passage ticket to any person to any foreign country, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than one hundred nor more than five hundred dollars; provided, that nothing in this section shall be construed in

any manner to apply to any passport or other document required by law to be presented, having the signature or seal of any foreign consul resident within this state.

Sec. 2. This act shall take effect on and after its passage.

ESTRAYS.

The laws in relation to estrays, as they existed at the time of the adoption of the codes, continue in force, except so far as repealed or affected by subsequent legislation: See Pol. Code, sec. 19. They are not only affected or modified by acts in relation to pounds, a list of which will follow, but also by the acts relating to fences, those relating to trespassing animals; and also more or less by those relating to hogs, those relating to sheep, and those relating to stallions. To ascertain the law in any county, these different subjects or the references to special and local acts under the name of the county should be consulted in connection with the following estray laws.

General estray act.—The following is the general estray act; but as will be seen by reference to section 17 it does not apply to San Diego, Santa Barbara, San Bernardino, Los Angeles, Monterey, and San Luis Obispo counties. It has also been more or less superseded as to some other counties by other acts which follow it.

An Act concerning estray animals.

[Approved April 19, 1856, 186.]

Estrays to be taken up.

SECTION 1. Every citizen resident householder in any county in this state, on finding any estray horse, mare, mule, jack, or jennet, or any neat cattle, sheep, or goats, or any number of such animals, upon his farm or premises, who shall desire to take up the same, shall, at any time after the expiration of twenty days from the finding of the same, go before some justice of the peace in his township, or if there be no acting justice therein, then before some justice of a neighboring township, and make oath that he has made diligent inquiry throughout his neighborhood to ascertain the ownership of such estrays, and that he has also put up, ten days previously, a written notice in one or more of the most public places in his township, naming the place or places, setting forth all the information in his possession concerning the said animals, embracing a description of the marks and brands thereof, and that he has examined the county records of marks and brands, and that he found none of the marks or brands of such animal or animals upon record, and that he was about to post the same. He shall also, at the same time, make oath that the marks and brands of said animal have not been altered since they came to his farm or premises, and that the owner or owners are unknown to him. [*Amendment, approved March* 28, 1859, 147.]

The above amendment does not apply to the counties of Trinity, Tuolumne, and Sacramento (see section 9 of the act of March 28, 1859, given *post*), as to which counties the original section 1 still applies. It is as follows:

SECTION 1. Every citizen resident householder in any county in this state, on finding any estray horse, mare, mule, jack, or jenny, or any neat cattle, or any number of such animals, upon his farm or premises, who shall desire to take up the same, shall, at any time after the expiration of twenty days from the finding the same, if such animal or animals remain on his farm or premises, go before some justice of the peace of his township, or if there be no acting justice therein, then before some justice of a neighboring township, and make oath that he has made diligent inquiry throughout his neighborhood, to ascertain the ownership of such estrays, and that he has also put up, ten days previously, a written notice, in one or more of the most public places in his township, naming the place or places, setting forth all the information in his possession concerning the said animals, embracing a description of the marks and brands

thereof, and that he was about to post the same. He shall also, at the same time, make oath that the marks and brands of said animals have not been altered since they came to his farm or premises, and that the owner or owners are unknown to him.

Justice to appoint appraisers.

SEC. 2. At the time the taker-up appears before the justice, as aforesaid, the justice shall appoint two disinterested appraisers, who are resident householders of the county, to appraise and describe such animal or animals.

Duty of appraisers.

SEC. 3. The appraisers so appointed, if they are not already able to describe and appraise such estray, shall, as soon as practicable, proceed to view the same, and make out a detailed description thereof, stating the marks, brands, supposed age, color, stature, and value of each animal, which description and valuation shall be signed by the appraisers, and sworn to before the justice appointing them.

Justice to record description.

SEC. 4. It shall be the duty of said justice immediately to record in a book, to be by him kept for that purpose, a statement of the taking up, as aforesaid, together with a description, as sworn to by the appraisers, and their appraisement.

Record of copy of entry from entry-book.

SEC. 5. The justice shall, within twenty days, if the estrays have not previously been claimed and proved by the true owner, make out and transmit a certified copy of the entry in his estray-book, as aforesaid, to the county recorder of the county, which shall immediately be by him recorded in a book to be kept for that purpose. Said record, and also the justice's book, to be, at all proper times, subject to examination, by all persons making application, without charge or fee.

How estrays may be reclaimed.

SEC. 6. If the owner of any estray horse, mare, mule, jack, or jenny, posted as aforesaid, shall within six months, or the owner of neat cattle shall within three months, from the time the same was posted, appear and claim the same, he shall notify the taker-up thereof, and the owner shall establish his claim to such animals before some justice of the peace of the proper township, by such evidence as shall be satisfactory to the justice. In all cases when the claimant shall make satisfactory proof of ownership the justice shall make an order that he have restitution of the animal so proved upon his paying the costs, and to the taker-up the expenses and costs that may be awarded him by the justice; provided, the justice shall not allow any expense for keeping an estray which the taker-up or any one under his authority may have worked, ridden, or used while in his possession. [*Amendment, approved April* 4, 1864; 1863–4, 386; *took effect immediately.*]

When rights forfeited.

SEC. 7. If the owner of any lost or stray animal shall not appear and prove his property therein within the time specified in section one of this act, he shall forfeit his right thereto, and the property in such animal shall be vested in the taker-up upon his paying into the county treasury the one half appraised value thereof as fixed by the appraisers as aforesaid. [*Amendment, approved April* 4, 1864; 1863–4, 386; *took effect immediately.*]

Animal not to be removed from county.

SEC. 8. No person taking up any animal under this act shall sell, exchange, or dispose of the same in any manner, or remove the same from the county in which it was posted, until after the expiration of the time specified in section one of this act from the posting, and until he shall have paid the one half appraised value into the county treasury. [*Amendment, approved April* 4, 1864; 1863–4, 386; *took effect immediately.*]

Animal dying or escaping.

SEC. 9. If any estray animal die, or escape from the possession of the taker-up, at any time before the expiration of the time specified in section one of this act from the taking up, he shall not be held liable in any manner on account of such animals. [*Amendment, approved April* 4, 1864; 1863–4, 386; *took effect immediately.*]

Proceedings where money paid.

SEC. 10. In all cases where money has been paid into the county treasury, pursuant to the seventh section of this act, the same shall be kept in separate account by the treasurer, and safely held in trust for the space of six months after it is so paid in, to be paid over to the true owner of the estray, upon such owner within the said time producing to the treasurer the certificate of the proper justice, setting forth that said owner had made satisfactory proof of ownership within the six months, as aforesaid, by a like proceeding as provided for in the sixth section of this act. The treasurer retaining out of said money his own percentage.

Appropriation of money not legally withdrawn.

SEC. 11. All moneys paid into the county treasury under the provisions of this act, if not legally withdrawn, as above provided, shall become a part and belong to the county school fund, and be drawn from the county treasury on the warrant of the county superintendent, and shall be exclusively appropriated to the county school fund, and for no other purpose.

Owner not to take, etc.

SEC. 12. The owner of any estray animal which has been legally taken up, or for the taking up of which proceedings have been commenced under this act, knowing the same to have been posted, shall not be permitted to take, lead, or drive the same from the premises or possession of the person legally possessed thereof, until proved and the charges paid; and any person knowingly and willfully violating the provisions of this section shall be subject to all the penalties that he would be subject to under the statute law; provided he had no claim to said animal.

When taker-up of estray deemed guilty of larceny.

SEC. 13. If any person shall take into use, or in any manner dispose of, any lost or estray animal, which may be found upon his farm or premises, or exercise any control over any such animal, except in case said animal has broken into his lawful inclosure, without having first posted the same, or having proceeded to post any such animal shall use, or in any manner dispose of, the same, contrary to and in violation of the provisions of this act, he shall be deemed guilty of larceny, and punished accordingly.

County may recover when taker-up neglects to pay over money.

SEC. 14. If at the expiration of the time specified in section one of this act from the taking up of any estray under this act the justice before whom the

same was posted, his successor in office, or the district attorney of the county, has good reason to believe the taker-up has not duly paid into the county treasury the one half appraised value as herein required, it is hereby made the special duty of said justice in whose custody the record of the estray remains, or the district attorney, to issue a notice to the delinquent, requesting him to appear before the justice on a day specified, and show cause, if any he can, why judgment should not be entered against him in favor of the county for the sum. Such notice may be delivered to the sheriff of the county, or any constable of the proper township, and by him served on the proper party. [*Amendment, approved April* 4, 1864; 1863–4, 386; *took effect immediately.*]

Judgment against delinquent.

SEC. 15. If no sufficient cause be shown, the justice shall enter judgment against the delinquent, for the amount due the county, with costs, which judgment shall be a lien upon all the property, real and personal, belonging to the delinquent, from the time the same is entered.

Fees.

SEC. 16. In all cases where any services are performed by any officer or officers under this act, their fees shall be allowed as follows: To the justice, for all services connected with the posting of the animal or animals, which shall include the transcript for the recorder, two dollars; the county recorder, for recording transcript and all other services, two dollars; which fees shall be paid by the taker-up. Said taker-up shall be allowed five dollars for taking up such animal or animals taken up at the same time, and one dollar per head per month for the keeping of the same, provided the same be of cattle; and two dollars, provided the same be of the horse kind; and twenty-five cents, provided the same be sheep or goats. [*Amendment, approved March* 28, 1859, 147.]

The above amendment does not apply to the counties of Trinity, Tuolumne, and Sacramento (see section 9 of the act of March 28, 1859, given *post*); as to which counties, the original section is in force, as follows:

SEC. 16. In all cases wherein any services are performed by any officer or officers, under this act, their fees shall be allowed as follows, viz.:

To the justice for all services connected with the posting the animal or animals, which shall include the transcript for the recorder, two dollars.

To the county recorder for recording the transcript, one dollar.

For all services performed by the justice under this act, other than the above, and for all services performed by other officers, the same fees as are allowed to civil officers in similar cases.

Not applicable to certain counties.

SEC. 17. An act entitled "An act concerning estray animals," passed May first, eighteen hundred and fifty-one, is hereby repealed; provided, that nothing in this act be construed so as to apply to the counties of San Diego, Santa Barbara, San Bernardino, Los Angeles, Monterey, and San Luis Obispo.

The act of May 1, 1851, 299, referred to, applied to all the counties of the state except San Diego, Santa Barbara, San Luis Obispo, Los Angeles (then including San Bernardino), Monterey, Santa Cruz, Santa Clara, Marin, Sonoma, Mendocino, and Napa.

An Act amendatory of and supplementary to the foregoing act of April 19, 1856.

[Approved March 28, 1859, 147.]

Sections 1–6 contain the amendments to sections 1, 7, 8, 9, 14, and 16 of the act of April 19, 1856, either therein inserted, or referred to in notes where since further amended.

Appropriation of moneys arising from sale of estrays.

SEC. 7. It shall be the duty of the justice of the peace, upon the receipt of the money proceeding from the sale of such stray or strays, to award to the taker-up the amount as provided for in this act, and pay the same; also, five per cent of said proceeds to the constable, and pay the residue to the county treasurer, taking his receipt for the same, and transmit it to the county recorder, together with the transcript of marks and brands of the said animal or animals. When the owner of such animal or animals shall appear and prove the same, it shall be the duty of the justice of the peace to transmit a notice of the same to the county recorder.

Marks and brands.

SEC. 8. Whenever the brand or mark of any animal claimed to be an estray under the provisions of this act is recorded in the office of the county recorder of the county of which such animal may be, it shall be the duty of any person upon whose premises such animal may be to give the owner of such brand or ear-mark so recorded twenty days' notice of the fact that such animal is claimed by him to be an estray. It shall be unlawful for any person to post or take up any animal as an estray under the provisions of this act the brands and ear-marks of which are so recorded, until after such notice has been given.

SEC. 9. The provisions of this act shall not apply to the counties of Trinity, Tuolumne, and Sacramento. [*Amendment, approved January* 24, 1860, 9.]

An Act concerning estrays, and animals found running at large in the county of Santa Clara.

[Approved April 27, 1863, 581.]

Concerning estrays.

SECTION 1. Any person finding at any time an estray horse, mare, mule, jack, jennet, or any estray cattle, sheep, hogs, or goats, or any number of such animals, upon his farm, land, or other premises, or any person finding any or all such animals running at large upon any public street, road, lane, alley, avenue, highway, square, or other public thoroughfare, whether the owner of such animals is known or unknown, may take the same up and proceed therewith as hereinafter directed; and no person shall remove such animals from the possession of the taker-up, or from the possession of the officer into whose hands they may be placed for the purposes of sale, except as hereinafter provided. Any of the above-named animals herded or found grazing upon any public street, road, highway, avenue, alley, or public square, or upon private property, without the consent of the owner thereof, whether accompanied by a herder or not, shall be deemed and held to be estrays and animals running at large within the meaning of this act, and shall be dealt with as hereinafter provided, and be subject to the penalties herein named. [*Amendment, approved March* 27, 1872; 1871–2, 580; *took effect on day of approval; repealed conflicting acts.*]

Notification to owners.

SEC. 2. The person taking up such animals shall confine the same in a secure place, and shall post notices, containing a description of the animals taken up, with the marks and brands if they have any, a statement of the place of finding, and the place where the same are confined, as follows: one notice at the door of the school-house situated in the school district where the animals are found, one at the door of the nearest post-office, and shall file one with the county recorder of Santa Clara county. If the mark or brands of the owner

or owners of such animals is recorded in the county recorder's office of said county, the recorder thereof shall, within two days after the filing of such notice, deposit a copy thereof in the United States post-office, postage prepaid, and addressed to such owner at his place of residence, if the same be known. If such animals be owned by a corporation or association, such notice may be directed and addressed to any officer of such corporation or association. The county recorder shall receive and be entitled to charge for his services the following fees, to wit: For filing the notice, fifty cents; for serving the copy thereof, as herein provided, one dollar; for searching the records of brands, the sum of fifty cents. If the owner of the animals posted as above provided fails to appear within ten days after depositing such notice in said recorder's office, prove his property, and pay to the taker-up the following damages, to wit: for every sheep, the sum of one dollar; for every hog or goat, the sum of two dollars; and for other animals mentioned in this act, the sum of four dollars per head; also the fees of the county recorder—then the taker-up of such animals may give notice to any constable of the county of the posting of such animals. The giving and posting of the notices in this section mentioned shall be held to be directory, and no irregularity in giving or posting such notices, nor in the form thereof, shall invalidate or vitiate a sale of such animals as provided in this act, nor impair the right of the taker-up to hold such animals, nor prevent the recovery of the damages herein named. [*Amendment, approved March* 27, 1872; 1871–2, 580; *took effect on day of approval; repealed conflicting acts.*]

Constable to sell.

SEC. 3. The constable notified shall immediately proceed to sell such animals at public sale, in conformity with the law concerning sales on execution; provided, that said owner or owners may redeem said animals at any time before sale by paying the aforesaid damage, and such costs as may have accrued, to the officers; and provided further, that such owner or owners may redeem such animals at any time within six months after such sale by producing satisfactory evidence of his right thereto, and paying to the purchaser the amount of the purchase money, with five per cent added thereto, together with the necessary expenses incurred by said purchaser in keeping said animals.

Fees of constables.

SEC. 4. The constable making such sales shall be entitled to the same fees as are provided for by law for sales on execution.

Surplus.

SEC. 5. The constable making such sales shall pay the surplus in his hands, if any remain after payment of costs and damages as above prescribed, to the owner, if he be present and demand the same, and produce satisfactory evidence of his right thereto; and if not, then said constable shall pay such surplus to the county treasurer, and take his receipt therefor, which receipt he shall file with the county recorder of Santa Clara county. If any person or persons shall, within one year thereafter, prove to the satisfaction of the board of supervisors of said county that he or they are entitled to such sum, or any part thereof, said board of supervisors shall order such sum to be paid over to such person or persons, and if not so ordained, the same shall become a part of the common-school fund of said county.

Validity of sales.

SEC. 6. No sale made by virtue of this act shall be valid unless the provisions of section two thereof in regard to notices be fully complied with.

Section 7, providing that where more than ten animals belonging to one man were posted at one time the damages for all above that number should be only one half the sums provided in original section 2, was repealed by the act of March 27, 1872, from which the above amendments are taken.

SEC. 8. All acts and parts of acts in conflict with this act are hereby repealed, so far as they relate to the county of Santa Clara; provided, that nothing herein contained shall be construed so as to deprive any person of the right to sue and recover damages for trespass by any animals mentioned in this act.

SEC. 9. This act shall take effect and be in force from and after its passage.

An Act concerning estrays in certain counties in this state.

[Approved April 27, 1863, 697.]

Notice of taking up.

SECTION 1. Any person finding an estray horse, mare, mule, jack, jenny, or any estray cattle, sheep, hogs, or goats, or any number of them, upon his farm, or other inclosed premises, may post notices containing a description of the place of the finding such estrays, with all visible marks and brands upon them, as follows: one notice upon the school-house door of the school district wherein the estrays are found, and upon the door of the nearest post-office, and file another with the recorder of the county where the estrays are found; and in case the mark or brand of the owner or owners of the estrays is recorded in the office where the notice is filed, then the recorder shall, within three days after the filing of the notice, deposit a copy thereof in the post-office, with the postage paid thereon, addressed to the owner or owners of the stock, or if owned by a company, to the president or managing agent of such company, at his or their place of residence. The fee of the recorder shall be twenty-five cents for filing the notice, and fifty cents for serving a copy thereof, as required by this section.

Damages, etc.

SEC. 2. If the owner of the animals posted by virtue of this act fails to appear within twenty days thereafter, and prove his property, and pay damages to the taker-up, as follows: for sheep, ten cents each; for hogs and goats, fifty cents each; and for all other stock, one dollar each; also the fees of the recorder —then the finder of such estray may give notice to some constable of the county of the posting of such estray.

Sale of estrays.

SEC. 3. The constable notified shall immediately proceed to sell such estray at public sale, in conformity with the law concerning sales on execution, except the notice of the sale of horses, mares, jacks, mules, and jennies shall not be less than twenty days; provided, the owners of estrays may, at any time before sale, retake them by paying the aforesaid damages and such costs as may accrue to the officer.

Fees.

SEC. 4. The constable making such sale shall be entitled to the same fees as are provided by law for sales on execution.

Surplus.

SEC. 5. The constable making such sales shall pay the surplus in his hands, if any remain after payment of costs and damages as above prescribed, to the owner, if he demand the same within three months after sale, and if not, then he shall pay such surplus to the county treasurer, and it shall become a part of the school fund.

SEC. 6. No sale made by virtue of this act shall be valid unless the provisions of section one, in regard to notices, be fully complied with.

Escaping stock.

SEC. 7. Stock mentioned in this act escaping from the lands of the owners or keepers, into an adjoining farm or inclosure, shall not be considered estrays under the provisions of this act.

SEC. 8. In case above ten estrays belonging to one man are posted at one time, then the damages for all above that number shall be one half of that specified in section two of this act.

Applicable to certain counties.

SEC. 9. This act shall apply only to the counties of Napa, San Mateo, Klamath, Del Norte, Marin, Humboldt, Mendocino, Lake, Alameda, Calaveras, Sutter, Siskiyou, and Contra Costa. It shall also apply to the counties of Yolo, Solano, Butte, and San Joaquin, except so much thereof as relates to hogs.

SEC. 10. All acts and parts of acts in conflict with the provisions of this act, so far as they apply to counties therein named, are hereby repealed.

Marin county.—An act to prevent stock from running at large upon the roads and highways in the county of Marin, approved March 25, 1876; 1875–6, 482. This act, so far as it applies to the subject of the foregoing act of April 27, 1863, supersedes it, and is now the law in Marin county.

Napa county.—An act concerning estrays in the county of Napa, approved April 27, 1863; 590, which was in nearly the same words as the foregoing act, seems to have been superseded by an act concerning estrays in the county of Napa, approved March 20, 1872; 1871–2, 434. The last-named act was repealed by an act in relation to the protection of agriculture and trespassing of animals, approved March 27, 1874; 1873–4, 705. With the exception of the last-mentioned act, Napa county seems to have no estray law. There is, however, an act to prevent certain animals from running at large in Napa City, approved April 10, 1862, 210; amended April 17, 1863, 322, and March 16, 1872; 1871–2, 386.

An Act to exempt the county of Sutter from the act concerning estrays in certain counties of this state.

[Approved January 27, 1864; 1863-4, 29.]

Exemption.

SECTION 1. The county of Sutter is hereby exempted from the provisions of the act entitled "An act concerning estrays in certain counties of this state," passed April twenty-seventh, A. D. one thousand eight hundred and sixty-three.

Public pounds.—In connection with the estray laws, and in some cases modifying them, some of the counties have laws in relation to public pounds. They are local and special in character, and are referred to under the heads of the counties having them; but it is deemed proper to repeat the references in this place.

Alameda county.—An act to establish and maintain public pounds for the better securing of estrays and other stock in the county of Alameda, approved March 31, 1866; 1865–6, 612; amended March 28, 1868; 1867–8, 479, and March 14, 1870; 1869–70, 306.

Del Norte county.—An act to make applicable to Del Norte county an act entitled "An act in relation to fence and pound districts in the county of Sonoma," approved March 2, 1872; approved March 23, 1876; 1875–6, 391.

San Francisco city and county.—An act in relation to the public pound in the city and county of San Francisco, approved May 14, 1861, 369.

San Joaquin county.—An act to establish and maintain public pounds for the better securing of estrays and other stock in the county of San Joaquin, approved April 4, 1864; 1863–4, 418; amended March 31, 1866; 1865–6, 588.

San Mateo county.—An act to establish and maintain public pounds for the better securing estrays and other stock in the several townships of the county of San Mateo, approved March 31, 1870; 1869–70, 512.

An act to establish pounds in the county of San Mateo, approved March 18, 1876; 1875–6, 335.

Santa Clara county.—An act to establish public pounds in the county of Santa Clara, approved April 24, 1862, 330.

Sonoma county.—An act in relation to fence and pound districts in the county of Sonoma, approved March 2, 1872; 1871–2, 203.

FEEBLE-MINDED CHILDREN.

An Act to establish the "California Home for the Care and Training of Feeble-minded Children," and provide for the maintenance of the same.

[Approved March 18, 1885; 1885, 198.]

The home created.

SECTION 1. An institution is hereby created to be known as the "California Home for the Care and Training of Feeble-minded Children."

Control.

SEC. 2. Said institution shall be under the control of a board of five trustees, to be appointed by the governor, by and with the advice and consent of the senate, whose terms of office, and the terms of their successors, shall be four years, and until their successors severally are appointed and qualified; and these trustees and their successors, and any and all the officers and employees, may be women; provided, that the first board shall be appointed by the governor within ten days after the passage of this act; and of such appointments three shall be by him designated for two years, and the other two shall be for four years, and at the end of their respective terms their successors shall be appointed in the same manner for four years. Vacancies occurring in any other way than by expiration of term shall be filled in the same manner for the unexpired term of the trustee whose place is vacant; and if when the vacancy occurs the senate is not in session, the governor shall fill the same by appointment; and if the term of the appointee has not expired when the senate next convenes, the appointment shall be submitted to the senate for confirmation.

Qualification of trustees—Officers.

SEC. 3. The trustees provided for in section two shall qualify by taking the usual oath of office, and shall, within ten days after their appointment, organize themselves into a board by the election of one of their number as president (whose official term as president shall be for one year), and shall also appoint a secretary, who shall receive an annual salary to be fixed by the board of trustees, not exceeding the sum of six hundred dollars, and whose residence shall be at the home. The secretary shall act under the superintendent, and, as an assistant, shall keep the books of the institution, and shall make a faithful entry of all its transactions, and also keep a complete record of the proceedings and orders of the board, and discharge such other duties as may be assigned to the position by the superintendent or trustees, and shall be subject to removal at the pleasure of the board.

Rules and regulations.

SEC. 4. The board shall establish such rules and regulations as may be deemed expedient for the management and government of the home, and for securing economy and accountability in all its affairs, and its officers and employees shall strictly observe such rules and regulations, which may be changed at any time, at the pleasure of the board.

Superintendent.

SEC. 5. The board shall appoint a superintendent, and fix the salary of the office, not exceeding nine hundred dollars, before entering upon the discharge of any duty. The appointee shall give a bond to the state of California in the sum of twenty thousand dollars, with sureties to the satisfaction of the board of trustees, for the faithful performance of all duties. The superintendent shall be the chief excutive officer of the home; shall have the general superin-

tendence of the buildings, workshops, grounds, and farm, together with their furniture, implements, fixtures, and stock, and the direction and control of all persons employed in and about the same, subject to the laws and regulations established by the trustees. The board shall appoint a matron and fix her salary, not exceeding a sum of nine hundred dollars per annum, and it may remove either the superintendent or matron for cause. The superintendent shall employ and discharge, subject to the approval and supervision of the board of trustees, such as teachers, attendants, assistants, artisans, and laborers, as he may think proper and necessary for the economical and efficient carrying into effect of the design of the institution; prescribe their several duties and places, and the board of trustees shall fix their compensation. The superintendent shall also, from time to time, give such orders and instructions as may appear best calculated to induce good conduct, fidelity, and economy in any department of labor and expense, and is authorized and enjoined to maintain salutary discipline among all who are employed by the institution, and to enforce strict compliance with such instructions, and uniform obedience to all the rules and regulations of the home; and shall further cause full and fair accounts and records of all his doings, and of the entire business and operations of the institution, together with the condition and prospects of the pupils, to be kept regularly from day to day, in books provided for that purpose, and shall see that all such accounts and records are fully made up to the date of each fiscal half-year, and that the principal facts and results, with an official report thereon, to be laid before the board at its semi-annual meetings, except it may be otherwise specially ordered. The exercise of all the powers of the superintendent shall be subject to the approval of the trustees. The superintendent shall conduct the official correspondence, and keep a record of the applications received, and the pupils admitted, and shall be accountable for the careful keeping and economical use of all furniture, stores, and other articles provided for the home, and prepare and present to the board, at its semi-annual meetings, a true and complete inventory of all personal property belonging to the home.

Donations for use of home.

SEC. 6. The board of trustees may take and hold in trust for the state any grant or devise of land, or any donation or bequest of money, or other personal property, heretofore or hereafter granted or devised, donated, or bequeathed to the use of said home, and shall dispose of the same in accordance with the wishes of the testator or devisor, if expressed; or if no conditions are attached to the bequest or donation, then to invest and use the proceeds of such investment for the best interests of the home.

Purchase of property for the home.

SEC. 7. The trustees are hereby empowered and instructed to purchase on behalf of the state, for the use of the home, such property as they may deem most advantageous for the use of the institution. The property, when furnished and ready for occupancy, must not exceed in cost the sum of twenty-five thousand dollars. The trustees shall purchase such property wherever in this state they may, by majority vote, determine; provided, that no such property shall be selected without the approval and recommendation of the resident physician of the Napa insane asylum at Napa, or the medical superintendent of the insane asylum at Stockton.

Admission.

SEC. 8. All imbecile and feeble-minded children between the ages of five and eighteen years, who have been residents of the state for one year, and who are incapable of receiving instructions in the common schools, shall be received into the home, and maintained and educated at the expense of the state; but the expenses of maintaining, supporting, clothing, and of traveling shall be paid by the parents or parties sending them, if such parents or parties are able to pay them, otherwise these expenses shall be borne by the state.

Forms of admission.

SEC. 9. The board shall prescribe and publish instructions and forms for the admission of pupils, and may include in them such interrogatories as they shall think necessary or useful to have answered, which instructions and forms shall be furnished to any person applying for them, and shall also be sent in sufficient numbers to the county clerks in the several counties of the state.

Non-residents.

SEC. 10. If the capacity of the home allows the reception of any additional pupils, the trustees may admit younger or older persons of same class upon the same terms before specified, and also non-residents of the state; but for all of this last class the trustees shall charge and receive for the home a fair rate of compensation, to be fixed by the trustees; and residence in the home, on the part of a person admitted as a non-resident of the state, shall not be held to change that status.

Object.

SEC. 11. The object aimed at in the institution shall be such care, training, and educating of those received as to render them more comfortable, happy, and better fitted to care for and support themselves. To this end the trustees shall furnish them such agricultural and mechanical education as they may be capable of receiving, and as the facilities offered by the state will allow, including farm-work, shops, and the employment of trade teachers, who may at any time be discharged for cause.

Contracts for supplies.

SEC. 12. The trustees are hereby authorized and required to contract for provisions, clothing, medicines, fuel, and all other supplies necessary for the support of the home, for any period not exceeding one year, and such contracts shall be limited to bona fide dealers in the articles contracted for. Such contracts shall be given to the lowest bidder, at a public letting thereof, if the price bid is a fair and reasonable one, and not greater than the usual market rates. Each bid shall be accompanied by such security as the board may require, conditioned upon the bidder entering into contract upon the terms of his bid, on notice of the acceptance thereof, and presenting a penal bond, with securities satisfactory to the board, in such sum as the board may direct, that he will faithfully perform his contract. Notice of the time, place, and conditions of the letting of each contract shall be given thence weekly for two successive weeks, in one daily paper published in the city of San Francisco, and once weekly, for two successive weeks, in a paper published in the county, and nearest the place where the home shall be located.

Annual report of trustees.

SEC. 13. The trustees, on the fifteenth day of November annually, shall make a report to the governor of the condition and progress of the home, together with an exhibit in detail of all receipts and expenditures.

Annual report of superintendent.

SEC. 14. The superintendent shall annually, after the close of the fiscal year, and before the date at which the trustees are required to make their annual report, make to the trustees a report giving the names, age, sex, nativity, residence, and date of reception of each pupil in the institution within the preceding year, and the average number in attendance during the year, and as far as can be ascertained, the causes of imbecility; also the number discharged, with the date and reason therefor in each case, together with the names of all paying pupils, and the amounts charged for them, and the amounts paid or unpaid; and also such other information and suggestions as to him may seem proper, which report shall be sent through the board to the governor, with the report of the trustees, and shall be printed for the use of the legislature.

Visitation.

SEC. 15. There shall be visitations and thorough examinations of all departments of the institution monthly, by one or more of said trustees, and quarterly by a majority of them; and at each visitation there shall be drawn and placed on record a detailed statement of the condition of the home, to be signed by the trustees making the statement, and to be at all times open to the inspection of legislative committees charged with the duties of examining public institutions. The trustees, during their monthly visitation, shall examine the books and accounts, and no account or claim shall be paid until it has been examined and certified as correct by at least two of the trustees.

Payment of bills.

SEC. 16. No bill shall be paid except upon accounts, certificates, or vouchers, duly certified by the superintendent, approved by the board of trustees

No compensation to trustees.

SEC. 17. The trustees shall receive no compensation for their services, but shall be entitled to receive their necessary expenses while attending to the business of the home.

Treasurer.

SEC. 18. The board of trustees shall elect a treasurer, who shall not be one of their number, and shall fix his compensation. He shall be required to give a bond in such sum as the trustees may determine, with good and sufficient sureties, to their satisfaction, for the faithful performance of his duties, and shall have the custody of all moneys, bonds, notes, mortgages, and other securities and obligations belonging to the home. He shall keep full and accurate accounts of receipts and payments, in the manner directed by the by-laws, and such other accounts as the trustees shall prescribe. He shall balance all his accounts annually, at the close of the fiscal year, and make a statement of the balances therein, and an abstract of all receipts and payments of the past year, which he shall, upon demand, deliver to the auditing committee of the board of trustees, who shall compare the same with his books and vouchers, and verify the same by a further comparison with the books of the superintendent, and certify their findings upon such examinations to the trustees at their annual meeting. He shall further render an account of the state of his books, and of the funds and other property in his custody, whenever required to do so by the trustees.

Transfer of property.

SEC. 19. The trustees are authorized and empowered to receive, on behalf of the state, from the "California Association for the Care and Training of Feeble-

minded Children," the pupils now in their charge, and also any property, moneys, credits, or things of value which said association may desire to transfer to this state institution.

Appropriation.

SEC. 20. There is hereby appropriated, out of any money in the state treasury not otherwise appropriated, the sum of forty-five thousand dollars for the purposes of this act.

SEC. 21. This act shall take effect immediately.

FEES AND SALARIES OF COUNTY OFFICERS.

The Political Code, sec. 4331, continued in force all statutes relating to the compensation, salaries, or fees of county or township officers, except so far as inconsistent with that code.

Below will be found what is known as the general law regulating fees in the various counties (with certain express exceptions); but it must be observed that, in the case of almost every county, there have been so many alterations and modifications by subsequent legislation, and in many cases by statutes purporting to relate to other subjects, that it is unsafe to rely upon it without at the same time referring to the special and local laws noted under the heads of the respective counties. The county-government act of 1883, moreover, has made important changes in the law respecting the fees and salaries of county officers, and the extent to which existing statutes on the subject are continued in force by this act, and the present state of the law must be sought by reference to sections 163 et seq. of that act, and to the repealing clause thereof. To aid the searcher, a list will be given, at the end of the general fee-bill, of the names of the different counties, and a reference to the special and local acts modifying it or applying to the subject of fees and salaries.

An Act to regulate fees of office and salaries of certain officers, and to repeal certain other acts in relation thereto.

[Approved March 5, 1870; 1869-70, 148.]

Fees of officers—Fees and salaries payable in coin.

SECTION 1. Fees and salaries are allowed to the officers hereinafter named, for their services rendered in discharging the duties imposed on them by law, as herein provided; and such officers may lawfully charge, demand, and receive the same to their own use and benefit, in gold and silver coin of the United States, and all costs recovered in any suit or proceeding shall be payable in gold and silver coin.

Fees of clerk of district court.

SEC. 2. No fees or other compensation shall be paid for certificate of declaration to become a citizen of the United States and for making a record thereof, or for issuing a certificate of citizenship to become a citizen of the United States, or for making a record thereof, and this section shall apply to all the counties in this state.

The above section was made applicable to the city and county of San Francisco: See 1869-70, 680. Clerks are allowed fees for indexing the names of naturalized citizens by an act of February 8, 1872; 1871-2, 80. The act referred to is given in Political Code, sec. 4205.

Same.

SEC. 3. At the commencement of each suit the clerk shall be entitled to demand and receive from the plaintiff, in addition to the judge's docket fee, as prescribed by law, not to exceed the sum of ten dollars, to cover costs to time of judgment; and from the defendant, three dollars, to cover costs for the same time. If, in the progress of the action, the sums allowed the clerk should be insufficient, he shall be entitled to demand from either party such further sum as he may deem necessary to cover costs to the time of judgment, including the entry thereof. Any excess of fees advanced by either party, on the determination of the action, shall be returned by the clerk to the party who advanced them, on demand.

In certain counties.

SEC. 4. In the counties of Amador, Alpine, Butte, Colusa, Del Norte, Inyo, Klamath, Kern, Lake, Mariposa, Marin, Napa, Mono, Merced, Nevada, Placer, Plumas, Sacramento, Lassen, Sierra, Stanislaus, San Diego, San Mateo, San Joaquin, San Luis Obispo, Shasta, Santa Barbara, Sutter, Tehama, Fresno, Trinity, Yolo, Tuolumne, and Tulare, the clerk of the district court, the clerk of the county court, the clerk of the probate court, the county clerk, and the county recorder shall receive the fees hereinafter specified:

The clerk of the district court shall receive, for entering each suit on the clerk's register of actions, and for making the necessary entries therein during the progress of the suit and of the trial and subsequent proceedings, for the first folio, fifty cents; for each subsequent folio, twenty-five cents.

For issuing every writ of process, under seal, fifty cents, except the writ of habeas corpus.

For issuing each subpœna for one or more witnesses, fifty cents.

For filing each paper, twenty-five cents.

For entering every motion and order, rule, default, discontinuance, dismissal, or nonsuit, fifty cents.

For entering every cause on the calendar, and making a copy thereof for the bar, for each term of the court, fifty cents.

For calling and swearing every jury on voire dire, fifty cents.

For calling and swearing every jury to try cause, fifty cents.

For receiving and entering each verdict of a jury, fifty cents.

For entering every final judgment, for the first folio, one dollar; for each subsequent folio, twenty-five cents.

For making up and filing judgment roll, fifty cents.

For each entry of judgment on judgment docket, twenty-five cents

For entering satisfaction or credit on judgment docket, fifty cents.

For administering every oath or affirmation, twenty-five cents.

For certifying the same, twenty-five cents.

For copy of any proceeding, record, or paper, per folio, twenty cents.

For every certificate under seal, fifty cents.

For issuing every commission to take testimony, one dollar.

For writing down testimony of witnesses during trial, for each folio (to be paid by the party requiring the same), twenty-five cents.

For issuing every execution, or other final process, under seal, fifty cents.

For copy of every decree or order of sale of mortgaged property, for each folio, twenty-five cents.

For receiving and filing every remittitur from supreme court, and accompanying papers, one dollar.

For taking and approving each undertaking or bond, fifty cents.

For taking justification thereto, fifty cents.

For taking testimony on justification to undertaking or bond, for each folio, twenty-five cents.

For taking acknowledgment of deed or other instrument, to include all writing and the seal, for the first name thereto, fifty cents; for each additional name, twenty-five cents.

For indexing every suit in the general index of the court, as required by law, for each name, twenty cents.

For filing and entering papers on transfer of cases from other courts, three dollars.

For transmission of files or transfer of cases to other courts, including certificate of order of transfer, two dollars.

For searching records or files of each year, except for suitors or their attorneys, fifty cents.

When the court is sitting as a court of criminal jurisdiction, the clerk shall receive, for the trial of each issue, five dollars; he shall receive no other fees in a criminal action or proceeding, except twenty cents per folio for copies of papers, and also twenty-five cents per folio for writing down testimony of witnesses on trial, when so ordered by the court; all which criminal business shall be a charge against the county.

Clerk of county court.

For filing all papers on appeal from justices' courts, for each case, one dollar and fifty cents.

When the court is sitting as a court of criminal jurisdiction, he shall receive for the trial of each issue, where the charge is misdemeanor, three dollars; and where the charge is felony five dollars.

He shall receive no other fees in a criminal case except for copies of papers, per folio, twenty cents; and for taking down testimony during a trial, when ordered by the court, for each folio, twenty-five cents; all of which criminal business to be a charge upon and paid for by the county.

For all other service, the same fees as are allowed the clerk of the district court for like services.

Clerk of probate court.

For issuing letters testamentary, or of administration, or of guardianship, fifty cents.

For writing and posting each notice required, fifty cents.

For each notice for publication, in addition to the cost of publication, fifty cents.

For recording wills, or other papers required by law to be recorded, for each folio, twenty-five cents.

For all other services, the same fees as are allowed the clerk of the district court for like services; provided, that if, upon the filing of the appraisement of any estate, it appear that the whole estate is not of the value of one thousand dollars, no further clerk's fees shall be charged.

No fees shall be allowed probate judges.

County clerk.

For issuing each marriage license, one half to be paid to the county recorder, two dollars.

For recording official bonds, and other papers required by law to be recorded, for each folio, twenty-five cents; for indexing same, twenty-five cents.

For recording the testimony and commitment, upon examination of insane persons, when it is ascertained by the county or probate judge that the person committed has sufficient property wherewith to pay the expenses of his commitment, per folio, twenty-five cents.

For filing all papers to be kept by him, not required to be recorded, twenty-five cents.

For indexing same, for each name indexed, twenty-five cents.

For issuing any license required by law, one dollar.

For all services not herein enumerated, the same fees as are allowed the clerk of the district court for like services.

For services under the registry act, the fees in said act provided.

In the county of Sacramento, the county clerk, and clerk of the district, county, and probate courts, shall receive such fees as are provided in this section, with the following exceptions, to wit:

For recording or copying any paper or notice, he shall receive but twenty cents per folio.

As clerk of the probate court he shall receive, for writing and posting notices, for each copy, twenty-five cents.

For each notice given by publication, twenty-five cents, in addition to costs of publication; provided, that the county clerk of Butte county shall receive, in lieu of the fees herein provided, as ex officio clerk of the several courts of record and probate court, and county clerk, exclusive of services as clerk of board of supervisors, the annual salary of three thousand dollars, payable out of the county treasury in the same manner as the salaries of other officers; and all fees allowed by this act to the said county clerk for his services as clerk of the district, county, and probate courts, and county clerk, shall be collected and paid over into the county treasury in the manner provided by section two of an act amendatory of an act amendatory and supplemental of an act entitled "An act to prescribe the duties and to provide for the compensation of the several county officers of the county of Butte," approved May third, eighteen hundred and sixty-one, approved April fourteenth, eighteen hundred and sixty-two; and provided further, that the salary herein provided shall be in full compensation for all services of deputies and assistants, and all laws allowing compensation for deputies and assistants are hereby repealed, so far as they refer to the county of Butte.

County recorder.

For recording every instrument, paper, or notice, for each folio, twenty cents.

For indexing every instrument, paper, or notice, twenty-five cents for each name indexed.

For copies of any record or paper, per folio, twenty cents:

For filing every instrument for record, and making the necessary entries thereon, twenty cents.

For each certificate under seal, fifty cents.

For every entry of discharge of mortgage or other instrument on margin of record, or for entering credit thereon, or witnessing same and indexing same, fifty cents.

For searching records or files in his office for each year, when required, fifty cents.

For abstract of title, for each conveyance or incumbrance certified, fifty cents.

For recording every plat or map, for each course, ten cents.

For figures and letters on plats or maps, per folio, fifty cents; provided, the fees for recording any town plat shall not exceed one hundred dollars.

For taking acknowledgments, including seal, for the first signature, fifty cents; for each additional signature, twenty-five cents.

For recording marriage license and certificate, to be paid by the clerk, one dollar.

For recording transcript, and for all other services in estray cases, one dollar.

For recording each mark or brand, seventy-five cents.

For administering oath or affirmation, twenty-five cents.

For certifying same, twenty-five cents.

For filing, indexing, and keeping each paper not by law required to be recorded, fifty cents.

For recording mining claims and water rights, the same as are allowed for recording any other instrument.

For all other services not herein enumerated, the same fees as are allowed the clerk of the district court for like services.

In the counties of Sacramento, San Joaquin, and Humboldt, the county recorder shall receive the same fees as prescribed for county recorders in the preceding section of this bill, with the following exception, to wit:

For recording or copying any instrument of writing, paper, record, or notice, twenty cents per folio.

SEC. 5. In the counties of Humboldt and Mendocino, the county clerk, and the clerk of the district, county, and probate courts, and the county recorder, shall receive the fees hereinafter specified.

Clerk of the district court.

For entering each suit on the clerk's register of actions and making the necessary entries thereon during the progress of the trial, for each folio, fifteen cents.

For issuing every writ or process under seal, forty cents, excepting for issuing the writ of habeas corpus.

For issuing subpœna for one or more witnesses, twenty cents.

For filing each paper, fifteen cents

For entering each motion, rule, order, default, discontinuance, dismissal, or nonsuit, twenty cents.

For entering every cause on calendar, and for making copy therefor for the bar, for each term of court, twenty cents.

For calling and swearing every jury, twenty cents.

For receiving and entering each verdict of a jury, forty cents.

For entering every final judgment, for the first folio, seventy-five cents; for each subsequent folio, fifteen cents.

For filing judgment roll, twenty cents.

For entering judgment on judgment docket, twenty cents.

For entering satisfaction of judgment, forty cents.

For administering every oath or affirmation, fifteen cents.

For certifying every oath or affirmation, fifteen cents.

For copy of any proceeding, record, or paper, for each folio, fifteen cents.

For every certificate under seal, forty cents.

For searching the records or files of each year in his office (but not to charge suitors or attorneys), twenty-five cents.

For issuing every commission to take testimony, forty cents.

For writing down testimony of witnesses during a trial, for each folio, fifteen cents, to be paid by the party requiring the same.

For issuing every execution or other final process, forty cents.

For issuing every decree or order of sale of mortgaged property, forty cents.

For issuing writ of injunction or attachment, forty cents.

For entering judgment by confession, the same fees as in other cases of entering judgment.

For receiving and filing remittitur from the supreme court, and the accompanying papers, forty cents.

For taking each bond or undertaking required by law, forty cents.

For taking justification thereto, thirty cents.

For acknowledgment of deed or other instrument, including all writing necessary and the seal, for the first name thereto, fifty cents; for each subsequent name, twenty-five cents.

When a court is sitting as a court of criminal jurisdiction, he shall receive for the trial of each issue, when the charge is misdemeanor, three dollars.

He shall receive no fee for any service whatever in a criminal action or proceeding, except for copies of papers, and for taking down testimony on trial, when required by the court, for each folio, fifteen cents.

For the trial of each issue, when the charge is felony, four dollars, which shall be a charge against the county.

Clerk of county court.

For filing all papers sent on appeal from justices' courts, in each cause, and making the necessary entries concerning the same, one dollar and fifty cents.

For all other services, the same fees as are allowed in the district court for similar services.

Clerk of probate court.

For issuing letters testamentary, or of administration, or of guardianship, forty cents.

For certificate of appointing appraisers, forty cents.

For writing and posting notices when required, for each copy, forty cents.

For recording will, and all other papers required to be recorded, per folio, fifteen cents.

For all other services, the same fees as are allowed the clerk of the district court for similar services.

For notice given by publication, in addition to the cost of publication, forty cents.

County clerk.

For issuing marriage licenses, one dollar.

For drawing an affidavit, deposition, or other paper, per folio, fifteen cents.

For filing transcript of judgments of justices' courts, for docketing the same, and issuing execution thereon, two dollars.

For recording certificate of incorporation, where recording is required by law, fifteen cents per folio.

For recording official bonds, when required by law, fifteen cents per folio.

For indexing same, twenty cents.

For recording the testimony and commitment, upon examination, of insane persons, when it is ascertained by the county or probate judge that the person committed has sufficient property wherewith to pay the expenses of his commitment, fifteen cents per folio.

For issuing writ of habeas corpus, and all services in relation thereto, two dollars.

Recorder.

For recording any instrument, paper, or notice, when required, for each folio, fifteen cents.

For copies of any record or paper, per folio, fifteen cents.

For filing or receiving every instrument for record, and making the necessary entries thereon, fifteen cents.

For making, in the several indexes required, all the entries required of the filing and recording any instrument, paper, or notice; for every such instrument, paper, or notice, twenty cents.

For any certificate under seal, forty cents.

For every entry of discharge of mortgage or other instrument, on margin of record, forty cents.

For searching records and files of each year in his office, twenty-five cents.

For abstract of certificate of title, when required, for each conveyance and incumbrance certified, fifteen cents.

For recording any town plat, for every course, ten cents.

For figures and lettering plats and maps, per folio, twenty-five cents; provided, the fees for recording any town plat shall not exceed the sum of one hundred dollars.

For taking and writing acknowledgments, including seal, for the first signature, fifty cents; for each additional name, twenty cents.

For recording marriage certificates, one dollar.

For filing and keeping each paper not required to be recorded, and indorsing same, if required, twenty cents.

Clerk's fees in other counties.

SEC. 6. In the counties of Contra Costa, Alameda, Monterey, Santa Clara, Sonoma, Santa Cruz, Solano, Los Angeles, Fresno, Tulare, and Kern, the county clerk, and clerk of the district, county, and probate courts, and the county recorder, shall receive the fees hereinafter specified; provided, that in the county of Los Angeles he shall receive in full compensation for all services rendered by him to the state and county the sum of one thousand two hundred dollars per annum, payable monthly.

Clerk of the district court.

For entering each suit on the clerk's register of actions, and making the necessary entries therein during the trial, fifty cents for the first folio, and for each subsequent folio twelve cents.

For issuing every writ or process under seal, forty cents, except for issuing the writ of habeas corpus.

For issuing each subpœna for one or more witnesses, twenty cents.

For filing each paper, ten cents.

For entering every motion, and order, rule, default, discontinuance, dismissal, or nonsuit, twenty cents.

For entering every cause on the calendar, and making a copy thereof for the bar, for each term of the court, twenty cents.

For calling and swearing every jury, forty cents.

For receiving and entering each verdict of a jury, twenty-five cents.

For entering every final judgment, for the first folio, fifty cents; for each subsequent folio, twelve cents.

For filing judgment roll, twenty-five cents.

For each entry of judgment on judgment docket, twenty cents.

For each entry of satisfaction of judgment, twenty-five cents.

For administering every oath or affirmation, fifteen cents.

For copy of any proceeding, record, or paper, for each folio, twelve cents.

For every certificate under seal, forty cents.

For issuing every commission to take testimony, forty cents.

For writing down testimony of witnesses during the trial, for each folio, fifteen cents, to be paid by the party requiring the same.

For issuing every execution or other final process, under seal, forty cents.

For issuing every copy of decree or order of sale of mortgaged property, for each folio, twelve cents.

For receiving and filing every remittitur from supreme court, and accompanying papers, forty cents.

For approval and justification of each bond required by law, forty cents, and for taking testimony thereon, fifteen cents per folio.

For acknowledgment of deed or other instrument, including all writing and the seal, for the first name thereto fifty cents, for each additional name twenty-five cents.

For indexing every suit in the district court, in general index, as required by law, for each name, fifteen cents.

For filing and entering papers on transfer of cases from other courts, including indexing, two dollars.

For transmission of files, or transfer of cases to other courts, including certificate of order of transfer, one dollar and fifty cents.

For searching records of files of each year, except for suitors or their attorneys, twenty-five cents.

For services under the act to provide for the reclamation of salt-marsh and tide lands, approved April twenty-seventh, eighteen hundred and sixty-three, he shall receive the fees therein prescribed.

When the court is sitting as a court of criminal jurisdiction, the clerk shall receive for the trial of each issue, when the charge is felony, three dollars; and for the trial of each issue when the charge is misdemeanor, two dollars.

He shall receive no other fees in a criminal action or proceeding, except twelve cents per folio for copies of papers, and for taking down testimony, when required.

County clerk.

For issuing marriage licenses, one dollar.

For drawing an affidavit, deposition, or other paper, per folio, fifteen cents.

For filing transcript of judgment of justices' court, for docketing the same and issuing execution thereon, two dollars.

For recording certificates of incorporation, where recording is required by law, twelve cents per folio.

For recording official bonds, when required by law, twelve cents per folio; for indexing same, twenty cents.

For recording testimony and commitment, upon examination, of insane persons, when it is ascertained by the county or probate judge that the person committed has sufficient property wherewith to pay the expenses of his commitment, fifteen cents per folio.

For all other services, the same fees as allowed to clerks of district courts for similar services.

Clerk of the probate court.

For issuing letters testamentary or of administration, forty cents.

For all certificates under seal, twenty-five cents.

For writing and posting notices, for each copy, twenty-five cents.

For recording wills and all other instruments required by law to be recorded, for each folio, twelve cents.

For filing each paper, ten cents.

For copies of all papers, twelve cents per folio.

For issuing each notice for publication, twenty-five cents.

For all other services, the same fees as are allowed the clerk of the district court for like services.

Clerk of the county court.

For filing all the papers sent on appeal from a justices' court in each cause, and making the necessary entries concerning the same, one dollar and fifty cents.

For all other services, the same fees as are allowed in the district court for similar services.

County recorder.

For recording every instrument, paper, or notice, for each folio, twelve cents.

For copies of any record, per folio, twelve cents.

For filing every instrument for record and making the necessary entries therein, including certificate or record, twenty-five cents.

For indexing every instrument, paper, or notice, as required by law, for each name, ten cents.

For every certificate under seal, forty cents.

For every entry of discharge of mortgage or other instrument on margin of record, and indexing same, fifty cents.

For searching records and files of each year in his office, when required, twenty-five cents.

For abstract or certificate of title, when required, for each conveyance or incumbrance certified, fifty cents.

For recording every town plat or map, for every course, six cents; for figures and lettering plats and maps, per folio, twenty-five cents; for topography, for every creek, river, road, or chain of mountains represented on the map, fifteen cents; provided, the fees for recording any town plat shall not exceed the sum of one hundred dollars.

For taking and writing acknowledgments, including seal, for the first signature, fifty cents; for each additional name, twenty-five cents.

For recording marriage license and certificate, one dollar.

For filing and keeping each paper not required to be recorded, twenty cents.

For recording transcript, and all other services in estray cases, one dollar.

For recording brands and marks, fifty cents.

Supreme court clerk.

SEC. 7. He shall collect in all civil cases hereafter appealed to the supreme court, when the transcript is filed, to include the issue of remittitur to court below, twenty dollars.

For dismissing appeal on clerk's certificate from court below, when dismissed for want of prosecution, two dollars and fifty cents.

For all proceedings in each case of mandamus, certiorari, and prohibition, returnable before the supreme court in bank, ten dollars.

And in addition to the fees above required to be collected, the clerk of the supreme court shall, upon filing the transcript on appeal, or the papers instituting any original proceedings in the supreme court, in all civil cases, demand and collect, for the use of the supreme court library fund, before filing the same, of the party filing said transcript or papers instituting such original proceedings, in the same manner as other costs in said cases are collected, the sum of five dollars; and for every certificate of admission to practice as attorney in the courts of this state said clerk shall demand and collect ten dollars for the use of said supreme court library fund, as provided by an act entitled "An act to

provide a law library for the supreme court," approved March thirtieth, one thousand eight hundred and sixty-eight. The fees collected by the clerk of the supreme court shall be for the use of the state treasury, and shall be paid over to the state treasurer on the first of every month; provided, the fees accrued and to accrue under the fee-bill in force prior to the first day of December, one thousand eight hundred and sixty-seven, shall belong to the clerk.

The foregoing section was superseded by section 752 of the Political Code.

Notary public.

SEC. 8. For drawing and copying every protest for non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, draft, or check, one dollar.

For drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft, or check, fifty cents.

For recording every protest, fifty cents.

For drawing an affidavit, deposition, or other paper, for which provision is not herein made, for each folio, twenty cents.

For taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first signature, fifty cents, and for each additional signature, twenty-five cents.

For administering and certifying an oath or affirmation, twenty-five cents.

For every certificate, under seal, to include the writing the same, fifty cents.

Sheriff.

SEC. 9. In the counties of Alpine, Alameda, Amador, Butte, Colusa, Del Norte, Fresno, Inyo, Klamath, Kern, Lake, Lassen, Mariposa, Mono, Merced, Napa, Nevada, Placer, Plumas, San Diego, San Joaquin, San Luis Obispo, Shasta, Santa Barbara, Sierra, Solano, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, Sacramento, and San Mateo, the sheriff shall receive the fees hereinafter specified:

For serving a summons and complaint, or any other process by which an action or proceeding is commenced, on each defendant, one dollar.

For serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, two dollars.

For serving an attachment upon any ship, boat, or vessel, in proceedings to enforce any lien thereon created by law, three dollars.

For his trouble and expense in taking and keeping possession of and preserving property under attachment or execution, or other process, such sum as the court shall order, provided that no more than three dollars per diem shall be allowed to a keeper.

For taking bond or undertaking, in any case in which he is authorized to take the same, one dollar.

For copy of any writ, process, or other paper, when demanded or required by law, for each folio, twenty cents.

For serving every notice, rule, or order, one dollar.

For advertising property for sale on execution, or under any judgment or order of sale, exclusive of the cost of publication, each notice, one dollar.

For serving a writ of possession or restitution, putting a person in possession of premises and removing the occupant, three dollars.

For holding each inquest, or trial of right of property, to include all service in the matter, except mileage, three dollars.

For serving a subpœna, for each witness summoned, fifty cents.

For traveling, to be computed in all cases from the court-house, to serve any summons and complaint, or any other process by which an action or proceeding is commenced, notice, rule, order, subpœna, attachment on property, to levy an execution, to post notice of sale, to sell property under execution or other order of sale, to execute an order for the delivery of personal property, writ of possession or restitution, to hold inquest or trial of right of property; or in executing a writ of habeas corpus; provided, that if any two or more papers be required to be served in the same suit, at the same time and in the same direction, one mileage only shall be charged, to the most distant points to complete such service; for each mile necessarily traveled, in going only, thirty cents; provided, in the county of San Diego he shall receive, for each mile necessarily traveled, in going only, fifty cents.

For commissions for receiving and paying over money on execution, or other process, when land or personal property has been levied on and sold, on the first one thousand dollars, three per cent; on all sums above that amount, two per cent.

For commissions for receiving and paying over money on execution without levy, or where the lands or goods levied on shall not be sold, on the first one thousand dollars, one and one half per cent; and one per cent on all over that sum.

The fees herein allowed for the levy of an execution, costs for advertising, and percentage for making or collecting the money on execution, shall be collected from the judgment debtor, by virtue of such execution, in the same manner as the sum herein directed to be made.

For drawing and executing a sheriff's deed, to include the acknowledgment, exclusive of stamps, to be paid by the grantee before delivery, three dollars and fifty cents.

For executing a certificate of sale, exclusive of the filing and recording of the same, one dollar.

For attending, when required, on any court of record, in person or by deputy, for each day, to be paid out of the county treasury, three dollars.

For making every arrest in a criminal proceeding, two dollars.

For summoning a grand jury of twenty-four persons, eight dollars.

For summoning a trial jury of twelve persons or less, four dollars.

For summoning each additional juror, twenty-five cents.

For executing every sentence of death, twenty dollars.

For all civil services arising in justices' courts, the same fees as are allowed to constables for like services.

For every mile necessarily traveled, in going only, in executing any warrant of arrest, subpœna, or venire, bringing up a prisoner on habeas corpus, taking prisoners before a magistrate or to prison, or for mileage in any criminal case or proceeding; provided, that in serving a subpœna or venire, when two or more jurors or witnesses live in the same direction, but one mileage shall be charged, thirty cents; provided further, that in the couuties of Amador and Sacramento, for every mile necessarily traveled, in any criminal case, twenty cents.

For delivering a prisoner at the state prison, fifty cents per mile, one way, for the distance established by law from the county seat of his county to the prison, and for every additional prisoner taken at the same time, twenty-five cents per mile.

For delivering an insane person at the asylum, fifty cents per mile, one way, for the distance established by law from the county seat of his county to the asylum, and for every additional insane person taken at the same time, twenty-five cents per mile.

For conveying a prisoner, when under arrest, the necessary expenses incurred in the transportation.

Each sheriff shall be allowed a deputy, as jailer, whose compensation shall be fixed by the board of supervisors, and paid out of the county general fund; provided, that in the county of Sacramento the sheriff shall be paid by the county the sum of two thousand four hundred dollars per annum for his services as jailer; and provided further, that the sheriff of the county of Amador shall be paid eight hundred dollars for his services as jailer; provided further, that in the county of San Diego the sheriff shall receive from the county a salary of three thousand dollars per annum, in lieu of all fees chargeable to the county for criminal business; provided further, that in the counties of Alameda, Amador, Yolo, Napa, Lake, Sacramento, Alpine, Fresno, Lassen, Butte, Kern, Tulare, Colusa, Tehama, Solano, and Trinity the sheriff shall be business license collector, and shall receive ten per cent on all moneys so collected, and twenty per cent on foreign miner's licenses; provided, that the sheriff of Nevada county shall be allowed only such deputies as may be authorized by any special statute in relation to said county; and provided, that the sheriff of Shasta county shall be ex officio collector of all taxes and licenses, except the road poll-tax; and it is further provided, that in the county of Tuolumne the sheriff shall be ex officio collector of all taxes and licenses.

Mileage in criminal case on proceeding. This clause does not allow any mileage for other traveling than that which is expressly mentioned in the statute, but simply fixes the rate when mileage is allowed by any other law: *Robinson* v. *P. S. R. R. Co.*, 3 West Coast Rep. 22.

SEC. 10. The sheriff of Sacramento county shall be ex officio tax collector of all taxes and licenses, excepting poll-taxes; and the sheriff of Amador, Plumas, Tuolumne, and Lassen counties shall be ex officio tax collector of all taxes and licenses, except road tax.

SEC. 11. In the counties of Sonoma, Mendocino, and Marin the sheriff shall be entitled to receive the fees hereinafter specified:

For serving a summons and complaint, or any other process by which an action or proceeding is commenced, on each defendant, one dollar.

For serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, one dollar and twenty-five cents.

For serving an attachment upon any ship, boat, or vessel, in proceedings to enforce any lien thereon created by law, one dollar and twenty-five cents.

For his trouble and expense in taking and keeping possession of and preserving property under attachment or execution, or other process, as the court shall order, provided that no more than three dollars per diem shall be allowed to a keeper, three dollars.

For taking bond or undertaking, in any case in which he is authorized to take the same, forty cents.

For copy of any writ, process, or other paper, when demanded or required by law, for each folio, fifteen cents.

For serving every notice, rule, or order, forty cents.

For advertising property for sale on execution, or under any judgment or order of sale, exclusive of the cost of publication, each notice, one dollar.

For serving a writ of possession or restitution, putting a person in possession of premises and removing the occupant, three dollars.

For holding each inquest, or trial of right of property, to include all services in the matter except mileage, three dollars.

For serving a subpœna, for each witness summoned, forty cents.

For traveling, to be computed in all cases from the court-house, to serve any summons and complaint, or any other process by which an action or proceeding is commenced, notice, rule, order, subpœna, attachment on property, to levy an execution, to post notices of sale, to sell property under execution or other order of sale, to execute an order for the delivery of personal property, writ of possession or restitution, to hold inquest or trial of right of property, or in executing a writ of habeas corpus; provided, that if any two or more papers be required to be served in the same suit, at the same time and in the same direction, one mileage only shall be charged to the most distant points to complete such service, for each mile necessarily traveled, in going only, thirty cents.

For commissions for receiving and paying over money on execution or other process, when lands or personal property has been levied on and sold, on the first one thousand dollars, two per cent; on all sums above that amount, one per cent.

For commissions for receiving and paying over money on execution without levy, or when the lands or goods levied on shall not be sold, on the first one thousand dollars, one and one half per cent, and one per cent on all over that sum.

The fees herein allowed for the levy of an execution, costs for advertising, and percentage for making or collecting the money on execution, shall be collected from the judgment debtor, by virtue of such execution, in the same manner as the sum therein directed to be made.

For drawing and executing a sheriff's deed, to include the acknowledgment, exclusive of stamps, to be paid by the grantee before delivery, three dollars and fifty cents.

For executing a certificate of sale, exclusive of the filing and recording of the same, one dollar.

For attending, when required, on any court, in person or by deputy, for each day, to be paid out of the county treasury, three dollars.

For making every arrest in a criminal proceeding, one dollar and fifty cents.

For summoning a grand jury of twenty-four persons, eight dollars.

For summoning a trial jury of twelve persons or less, four dollars.

For summoning each additional juror, twenty cents.

For executing every sentence of death, twenty dollars.

For all civil services arising in justices' courts, the same fees as are allowed in county and district courts.

For every mile necessarily traveled in executing any warrant of arrest, subpœna, or venire, bringing up a prisoner on habeas corpus, taking prisoners before a magistrate or to prison, or for mileage in any criminal case or proceeding; provided, that in serving a subpœna or venire, when two or more jurors or witnesses live in the same direction, but one mileage shall be charged, forty cents in going only.

For delivering a prisoner at the state prison, fifty cents per mile, one way, for the distance established by law from the county seat of his county to the

prison, and for every additional prisoner taken at the same time, twenty-five cents per mile.

For delivering an insane person at the asylum, fifty cents per mile, one way, for the distance established by law from the county seat of his county to the asylum, and for every additional insane person taken at the same time, twenty-five cents per mile; provided, that in the county of Sonoma the board of supervisors shall fix the mileage.

For conveying a prisoner when under arrest, the necessary expense incurred in the transportation.

Each sheriff shall be allowed a deputy, as jailer, whose compensation shall be fixed by the board of supervisors, and paid out of the county general fund; provided, that in the county of San Joaquin the sheriff shall be paid the sum of twelve hundred dollars per annum as jailer; and provided, that in the counties of Sonoma, Marin, and Mendocino, he shall be ex officio tax collector.

SEC. 12. In the counties of Contra Costa, Humboldt, Monterey, Santa Clara, Los Angeles, Santa Cruz, and Tulare the sheriff shall be entitled to receive the fees hereinafter specified:

For serving a summons and complaint, or any other process by which action or proceeding is commenced, on each defendant, one dollar.

For taking bond or undertaking in any case in which he is authorized to take the same, fifty cents.

For copy of any writ, process, or other paper, when demanded or required by law, for each folio, fifteen cents.

For serving every notice, rule, or order, fifty cents.

For serving a subpœna, for each witness summoned, twenty-five cents.

For serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, one dollar and fifty cents; but no traveling fees shall be allowed on such attachment, order of arrest, or order for the delivery of personal property, when the same accompanies the summons in the suit, and may be executed at the time of the service of the summons, unless for the distance actually traveled beyond that required to serve the summons. He shall be allowed such further compensation for his trouble and expense in taking and keeping possession of and preserving property under attachment or execution, or other process, as the court shall order; provided, no more than three dollars per diem shall be allowed to a keeper.

For serving an attachment upon any ship, boat, or vessel, in proceedings to enforce any lien thereon created by law, one dollar and fifty cents; also, three dollars per day for each day while such ship, boat, or vessel is in the actual custody of the sheriff, and such further necessary expenses incurred in serving the process and resulting from such custody as are supported by the oath of the officer making such service and allowed by the court.

For selling any boat, vessel, or tackle, apparel, or furniture thereof, so attached, or other goods attached, and for advertising such sale, the same fees as for sale on execution.

For advertising property for sale on execution, or under any judgment or order of sale, exclusive of the cost of publication, one dollar.

For commissions for receiving and paying over money on execution or other process, when lands or personal property has been levied on and sold, on the first one thousand dollars, two per cent; on all sums above that amount, one per cent.

For commissions for receiving and paying over money on execution without levy, or when the lands or goods levied on shall not be sold, on the first one thousand dollars, one and one half per cent, and one per cent on all over that sum.

The fees herein allowed for the levy of an execution and for advertising, and for making or collecting the money on execution, shall be collected from the judgment debtor by virtue of such execution, in the same manner as the sum therein directed to be made.

For drawing and executing a sheriff's deed, inclusive of acknowledgment and exclusive of stamps, four dollars, to be paid by the grantee.

For serving a writ of possession or restitution, or putting any person entitled into possession of premises and removing the occupant, five dollars.

For attending, when required, on any court of record, in person or by deputy, for each day, to be paid out of the county treasury, three dollars.

For holding each inquest or trial of right of property, to include all service in the matter except mileage, three dollars.

For making every arrest in a criminal proceeding, two dollars.

For summoning a grand jury, six dollars.

For summoning a trial jury, in any case, three dollars; for each additional juror, twenty cents.

For traveling, to be computed in all cases from the court-house, to serve any summons and complaint, or any other process by which action or proceeding is commenced, notice, rule, order, subpœna, venire, attachment on property, or to levy an execution, or execute an order of arrest, or order for the delivery of personal property, writ of possession or restitution, to hold inquest or trial of right of property, or in bringing up a prisoner on writ of habeas corpus, for each mile necessarily traveled, in going only, twenty-five cents; or for traveling to serve any process in criminal cases, or for taking a prisoner from prison before a court or magistrate, for each mile necessarily traveled, in going only, he shall receive twenty cents per mile; for taking a prisoner from the place of arrest to prison, or before a court or magistrate, for each mile necessarily traveled, in going only, twenty-five cents per mile; for each additional prisoner taken at the same time, fifteen cents per mile; provided, that if any two or more papers be required to be served in the same suit or proceeding, at the same time and in the same direction, one mileage only shall be charged; and provided also, in serving a subpœna or venire, when two or more jurors or witnesses live in the same direction, traveling fees shall be charged only for the most distant; and provided further, that only one mileage per day shall be charged for taking a prisoner from prison before a court or magistrate; provided, that in the county of Santa Clara the sheriff shall be entitled to thirty cents per mile, going only, as traveling fees in civil cases.

For executing every sentence of death, twenty dollars.

For all services in justices' courts, the same fees as are allowed to constables.

For delivering a prisoner at the state prison, fifty cents per mile, one way, for the distance established by law from the county seat of his county to the prison; and for every additional prisoner taken at the same time, twenty-five cents per mile.

For delivering an insane person at the asylum, forty cents per mile, one way, for the distance established by law from the county seat of his county to the asylum; and for every additional insane person, taken at the same time, twenty cents per mile.

And provided, that in the county of Los Angeles the sheriff shall receive the sum of one thousand two hundred ($1,200) dollars per annum as jailer; and for all services rendered the people of the state within his county, he shall receive the further sum of one thousand five hundred ($1,500) dollars per annum, to be paid out of the county treasury; and provided further, that the sheriff of Los Angeles county shall be ex officio tax collector of all taxes and business licenses of said county, and shall receive ten (10) per cent of the gross amount collected for poll-tax receipts; fifteen (15) per cent of the amount collected for state poll-tax receipts; and twenty (20) per cent on the amount collected from foreign miners' licenses; and for the collection of state and county taxes (except taxes for school purposes), he shall receive, on the first ten thousand dollars ($10,000) collected, four (4) per cent; on all sums over ten thousand ($10,000) dollars and under twenty thousand ($20,000) dollars, two (2) per cent; and on all sums over twenty thousand ($20,000) dollars, one and one half (1½) per cent.

Tax collector.

SEC. 13. The tax collector of the several counties shall receive ten per cent of the gross amount collected from road poll-tax receipts; fifteen per cent of the amount collected on state poll-tax receipts, and twenty per cent upon the amount collected from foreign miners' licenses; and for the collection of state and county taxes, except taxes for school purposes, he shall receive six per cent on the first ten thousand dollars collected; four per cent on all over ten thousand and under twenty thousand dollars, and two per cent on all over twenty thousand dollars; provided, that in the county of Monterey the tax collector shall receive for the collection of all state and county taxes, except taxes for school purposes, on the first ten thousand dollars collected, four per cent; on all over ten thousand dollars and under twenty thousand dollars, two per cent, and on all over twenty thousand dollars, one and one half per cent; provided further, that in the county of Humboldt the tax collector shall receive for the collection of state and county taxes four per cent on the first ten thousand dollars collected, three per cent on all over ten thousand dollars and less than twenty thousand dollars, and two per cent on all over twenty thousand dollars; provided further, the assessor of Solano county shall be ex officio state poll and road tax collector; provided further, that in the county of Shasta the collector of foreign miners' licenses shall pay into the county school fund thirty-seven and one half per cent of the fees received by him for the collection of said licenses under this section. The said tax collector, except in the counties of Alameda, Amador, Yolo, Napa, Lake, Sacramento, Alpine, Fresno, Lassen, Butte, Kern, Tulare, Colusa, Tehama, Solano, and Trinity, shall also receive one dollar for each business license sold, one half of which shall be paid to the county auditor. No percentage shall be allowed for the collection of taxes for school purposes. There shall be allowed by the state, to all the counties, ten per centum due on all moneys payable into the state treasury, derived from the sale of business licenses, in full for all expenses which may be incurred for collecting such licenses; provided, that in the county of Monterey no percentage shall be allowed for the collection of road poll-taxes; provided, that the assessor of Sutter county shall be ex officio state poll-tax collector; provided, that in the counties of Shasta and Trinity the collector shall receive no percentage on the road poll-tax, and said tax shall be collected as prescribed by existing laws; provided, that the provisions of this section shall not apply to the tax collector of Siskiyou or Calaveras counties. [*Amendment, approved March* 1, 1872; 1871–2, 178; *took effect from passage.*]

Clerk of the board of supervisors.

SEC. 14. In the counties of Butte, Placer, Tehama, Santa Clara, Alameda, San Joaquin, Plumas, Solano, and Napa the clerk of the board of supervisors shall receive a salary of five hundred dollars per annum; and in the counties of Yolo, Santa Barbara, and Colusa the sum of four hundred dollars per annum; and in the counties of Alpine, Amador, Contra Costa, Fresno, Humboldt, Inyo, Kern, Lake, Lassen, Los Angeles, Marin, Mariposa, Mendocino, Mono, Merced, Monterey, San Diego, San Luis Obispo, San Mateo, Santa Cruz, Shasta, Stanislaus, Sutter, Tehama, Trinity, Tulare, and Tuolumne he shall receive a salary of two hundred and fifty dollars per annum; and in the county of Sacramento, one thousand two hundred dollars per annum; and in the counties of Del Norte and Klamath he shall receive a salary of one hundred and fifty dollars per annum; provided, that in the county of Sonoma he shall receive such sum as the board of supervisors may allow. In addition to the above salaries, the clerk of the board of supervisors in each of the counties of this state shall be allowed to demand and receive for issuing each bridge or ferry license one dollar; for copy of any record or paper, per folio, twenty cents; for each certificate, fifty cents; provided, that in the county of Placer the recorder shall be clerk of the board of supervisors.

SEC. 15. There shall be allowed by the state to the several counties, in lieu for all allowances for salaries and fees authorized by law to be made by the state to the assessors and auditors of the several counties, and for all services for copying assessment rolls, and extending the totals of taxes thereon, the following amounts or percentage on the amount of state revenue derived from taxes on real and personal property, and paid into the state treasury during any fiscal year:

For auditor's compensation.

On the first ten thousand dollars, two per centum.

On all sums over ten thousand dollars and less than twenty thousand dollars, one and one half per centum.

On all sums over twenty thousand dollars and less than fifty thousand dollars, one per centum.

On all sums over fifty thousand dollars, three fourths of one per cent.

For assessor's compensation.

On the first ten thousand dollars, four per centum.

On all sums over ten thousand dollars and less than twenty thousand dollars, three per centum.

On all sums over twenty thousand dollars and less than thirty thousand dollars, two per centum.

On all sums over thirty thousand dollars and less than fifty thousand dollars, one and one half per centum.

On all sums over fifty thousand dollars, one per centum.

The controller of state is hereby authorized and required to make the allowance as herein specified, at any settlement of the county treasurer with the state; and provided, the said controller shall withhold the allowances for services of auditor until said auditor shall have made such reports to said controller as he is by law required to make.

County auditor.

SEC. 16. He shall receive, as a full compensation for all services required to be performed by him by law, as county auditor, the following amounts or per-

centage on all moneys which shall be paid into the county treasury during any fiscal year: On the first twenty thousand dollars, two per centum; on all sums over twenty thousand dollars and less than forty thousand dollars, one and one half per centum; on all sums over forty thousand dollars and less than sixty thousand dollars, one per centum; and on all sums over sixty thousand dollars, one half of one per centum; provided, that he shall not receive any percentage on moneys paid into the county treasury for school purposes; and provided further, that in the following counties, in lieu of said percentage, the annual compensation of county auditor shall be as follows: In the county of Santa Clara, one thousand five hundred dollars; in the counties of Solano and Sonoma, one thousand two hundred dollars; in Contra Costa, Marin, Santa Cruz, and Los Angeles, nine hundred dollars; in the county of Sutter, seven hundred and fifty dollars; in the counties of Klamath, Monterey, and Del Norte, four hundred dollars; in the counties of Humboldt and Butte, six hundred dollars; in the counties of San Diego and Inyo, five hundred dollars. The compensation of the county auditor shall be allowed by the board of supervisors quarterly; and the several county treasurers are hereby authorized to apply the amounts allowed by the state for the auditors' compensation to the payment of such allowances. This section shall not apply to Calaveras county. [*Amendment, approved March* 1, 1872; 1871–2, 178; *took effect from passage.*]

County treasurer.

SEC. 17. County treasurers shall receive an annual salary as herein provided:

In the counties of Napa and Alameda, three thousand dollars.

In the counties of Santa Clara and San Joaquin, four thousand dollars.

In the counties of Marin and Sonoma, two thousand five hundred dollars.

In the county of Amador the treasurer shall receive a salary of one thousand eight hundred dollars per annum.

In the counties of Butte, Colusa, Tehama, Placer, Yolo, and Solano, the sum of two thousand dollars.

In the counties of Contra Costa and Monterey, the sum of one thousand eight hundred dollars.

In the counties of Los Angeles, Mendocino, Fresno, and Tulare, the sum of one thousand five hundred dollars per annum.

In the counties of Shasta, Sutter, San Luis Obispo, Humboldt, Santa Cruz, and Santa Barbara, the sum of one thousand dollars.

In the counties of Kern, Tuolumne, Mariposa, Plumas, San Mateo, Stanislaus, Merced, and Lake, the sum of one thousand two hundred dollars; provided, that the county treasurer of Mono county shall receive a salary of four hundred dollars.

In the counties of Alpine, Del Norte, Inyo, Klamath, and Lassen, the sum of six hundred dollars.

In the counties of San Diego and Trinity, the sum of nine hundred dollars; provided, that the amounts above specified shall be in full for the compensation for all services, except mileage; and all commissions received from the state and county, and all other sources, except mileage, shall be paid into the general fund of the county.

The treasurer of Sacramento county shall receive the commissions allowed by the state, and one per centum on all moneys paid into the treasury for county purposes; provided, he shall not be allowed to charge or retain commissions on

all money paid in for hospital or school purposes. In all counties where the treasurer is ex officio collector of taxes, excepting the county of Sacramento, the percentage allowed by law for collection of taxes on real and personal property, on all taxes collected by such treasurer, after the completion of the assessment roll, shall be paid into the treasury for county purposes; provided, that in the county of Santa Clara the collector shall not receive any percentage other than from license and poll taxes; and provided further, that the treasurer of Alameda county shall be allowed, for his services as ex officio tax collector, the fees allowed in section thirteen; and provided, that the treasurer of Solano county, as ex officio state and county tax collector, shall receive, as such collector, two per cent on all moneys by him collected.

County assessor.

SEC. 18. County assessors shall each receive an annual salary as herein provided:

In the county of Alameda, three thousand dollars.

In the counties of Santa Clara, Yolo, San Joaquin, Butte, and Los Angeles, two thousand dollars.

In the county of Sonoma, two thousand seven hundred dollars.

In the counties of Mariposa, Stanislaus, Merced, Tuolumne, and Solano, one thousand eight hundred dollars; provided, that in the county of Mariposa the assessor shall be ex officio collector of business and foreign miners' licenses, and shall receive as compensation twenty per cent of such licenses.

In the counties of Amador, San Mateo, Monterey, Marin, and Mendocino, one thousand five hundred dollars.

In the counties of Humboldt, Contra Costa, Shasta, Trinity, Plumas, San Luis Obispo, and Santa Barbara, one thousand two hundred dollars.

In the county of Placer, two thousand five hundred dollars, for all services for himself and all deputies.

In the counties of Tulare, Kern, Fresno, Sutter, and Santa Cruz, one thousand dollars.

In the counties of Alpine, Inyo, Klamath, Lassen, and San Diego, six hundred dollars; provided, that in Mono county the assessor shall receive a salary of five hundred dollars.

In the county of Del Norte, five hundred dollars.

In the counties of Napa, Lake, Colusa, and Tehama, he shall receive such compensation, not exceeding six dollars per diem for each day necessarily employed in making assessments, as the board of supervisors shall determine; provided, that in the county of Solano the assessor shall be ex officio state and road poll-tax collector, for which service he shall receive the per cent hereinbefore directed; provided further, that the assessor of Butte county shall be collector of state poll-tax and personal property tax of persons owning no real estate in the county, for which service he shall receive the percentage allowed by law.

The board of supervisors shall designate what number of deputy assessors may be appointed, and they shall receive a sum not exceeding five dollars per day for each day they actually and necessarily attended to the duties of the office; provided, however, that no deputy assessor shall be paid by said counties for any services rendered between the first Monday in August and the first Monday in the following March; provided, that in the counties of Humboldt, Klamath, Del Norte, Sutter, Stanislaus, Tuolumne, Santa Cruz, Monterey,

Lake, Sonoma, Marin, Trinity, Shasta, Amador, Alpine, Santa Barbara, San Luis Obispo, Los Angeles, and Butte, no compensation shall be allowed for services of deputies; provided, that in the county of Alameda the board of supervisors shall not allow, for the expense of deputies, an amount exceeding two thousand dollars.

The county treasurers of the several counties are hereby authorized and directed to apply the amounts allowed by the state for assessor's compensation.

SEC. 19. The county assessor of Sacramento county and his deputies shall be paid by the county the salaries allowed them by the provisions of an act entitled "An Act providing for the government of the county of Sacramento," approved April twenty-fifth, eighteen hundred and sixty-three; and the assessor may retain for his own use the percentage allowed by law for collecting poll-taxes. The assessor may appoint deputies, as authorized by said act, and he may appoint a chief deputy, who shall be the office deputy and draughtsman, who may be employed the entire year, and shall be paid one hundred and fifty dollars per month. And the assessor of said county shall (in addition to the duties now required by law) be required to make in each year a map-book of said county, by United States townships, on a scale of not less than two inches to the mile; said book to contain, as near as may be ascertained, the exterior lines of each piece of real estate as assessed, and the owner's name thereon; said book to be delivered to the tax collector on the day that the assessment roll is delivered by the auditor to the tax collector.

The assessor of Sacramento county shall be ex officio collector of poll-taxes.

District attorneys.

SEC. 20. The district attorney shall receive for his services, to be paid quarterly, a salary, in the county of Sacramento, of two thousand dollars per annum.

In the counties of Sonoma, San Joaquin, Santa Clara, and Placer, one thousand five hundred dollars per annum; the district attorney in Amador county shall receive for his services, to be paid quarterly, a salary of one thousand two hundred dollars.

In the counties of Butte, Mariposa, Contra Costa, Los Angeles, San Mateo, Shasta, Stanislaus, Merced, and Tuolumne, one thousand two hundred dollars per annum.

In the counties of Alameda, Colusa, Tehama, Trinity, Solano, Napa, Monterey, Fresno, Tulare, Kern, Yolo, Mendocino, Sutter, and Marin, they shall receive the sum of one thousand dollars per annum.

In the counties of Inyo, Plumas, San Luis Obispo, and Santa Barbara, they shall receive the sum of eight hundred dollars per annum.

In the county of Santa Cruz he shall receive the sum of nine hundred dollars per annum.

In the counties of Alpine and San Diego, six hundred dollars per annum.

In the counties of Humboldt, Klamath, Lake, Lassen, Mono, and Del Norte, five hundred dollars per annum.

In addition to the salary herein provided for, the district attorneys of each of the counties of this state shall be entitled to charge and receive ten (10) per cent on all forfeited bonds and recognizances collected by him; for services rendered by him in the collection of delinquent taxes ten per centum on the amount recovered, to be added thereto if paid before judgment; if not so paid, then fifteen per centum, to be added to and constitute a part of the judgment; provided, that in no case shall the state or county be liable for such per centum.

For all amounts collected by him for the state or county, other than delinquent taxes, bonds, or recognizances, eight (8) per cent on the amount collected; provided, that in no event shall the compensation in any one case exceed five hundred dollars.

For every conviction had under the act to prohibit gaming, and the act to prohibit lotteries, gifts, raffles, gift-enterprises, and other schemes, to be collected from the party or parties offending or convicted, fifty (50) dollars.

For each conviction of felony where the penalty is death, fifty dollars; for every other conviction of felony, except as herein provided for, twenty-five dollars; and for each conviction in cases of misdemeanor, fifteen dollars.

In all convictions, the fees herein allowed shall be assessed against the defendant, and shall not become a county charge; provided, that in the counties of San Joaquin, Sonoma, Stanislaus, Merced, Mariposa, Fresno, Tehama, Colusa, Contra Costa, Napa, Lake, Kern, Tulare, Mendocino, Solano, Sacramento, Yolo, Alpine, Amador, Humboldt, Alameda, Marin, San Luis Obispo, Santa Barbara, and Monterey the fees herein allowed shall become a county charge, in case of the inability of the defendant to pay the same.

Superintendent of public schools.

SEC. 21. The superintendent of public schools in each and all of the several counties of this state shall be allowed for his services twenty dollars per annum for each school district, and all necessary traveling expenses; and he shall be allowed, in addition to his salary, for postage and expressage, payable out of the county school fund, a sum equal to fifty dollars; provided, that in the county of Siskiyou he shall receive such compensation as shall be provided by special act; and provided, that in the counties hereinafter named he shall receive a salary as follows, in full for all compensation:

In the county of Sonoma, one thousand six hundred dollars.

In the county of Alameda, two thousand dollars.

In the county of Santa Clara, one thousand eight hundred dollars; no fees.

In the county of Tulare, five hundred dollars.

In the counties of Solano, Stanislaus, Merced, and Mariposa, six hundred dollars.

In the county of Humboldt, four hundred dollars.

In the county of Del Norte, one hundred and fifty dollars.

In the counties of Kern and Marin, five hundred dollars.

In the county of Sutter the superintendent shall receive twenty dollars per annum for each school district, in full for all services required of him by law, payable out of the county general fund.

In the counties hereinafter named, the superintendent of common schools shall receive, in full compensation for all services, an annual salary, payable out of the county general fund, as follows:

In the county of Contra Costa, seven hundred and fifty dollars.

In the county of Santa Cruz, six hundred dollars.

In the counties of Monterey and Los Angeles, four hundred dollars.

In the county of Yolo, eight hundred dollars; he shall also be allowed in addition to his salary, for postage and expressage, payable out of the county school fund, the sum of one dollar per annum for each school district.

In the county of Nevada the superintendent shall receive an annual salary of one thousand dollars and his necessary traveling expenses, payable out of the general fund, in the same manner as other salaried officers are paid.

In the county of Butte, eight hundred dollars, in full for all compensation.

In the county of San Diego, one hundred dollars per annum, in full for all services required of him.

The superintendent of common schools in the counties of Fresno, Lake, Merced, Stanislaus, San Luis Obispo, Santa Barbara, and Napa shall receive such compensation as may be allowed by the board of supervisors of said counties, to be paid out of the county general fund.

Public administrators.

SEC. 22. Public administrators in the several counties of this state shall hereafter be entitled to receive for their services the same fees as are allowed executors and administrators, by an act entitled "An act to regulate the settlement of the estates of deceased persons," passed May first, eighteen hundred and fifty-one.

The above section was made applicable to the city and county of San Francisco: See 1869-70, 680.

Constables.

SEC. 23. For serving summons in civil cases, for each defendant, fifty cents.

For summoning any jury before a justice of the peace, including mileage, two dollars; provided, that in the counties of Amador and Butte he shall have two dollars and mileage.

For making sales of estrays, the same fees as for sales on execution.

For all other services, the same fees are allowed to sheriffs for similar services.

For services performed by the several officers under the act concerning watercraft found adrift, and lost money and property, passed April fifth, eighteen hundred and fifty, they shall receive the fees as are prescribed in said act; provided, that in the county of Los Angeles the constables therein shall receive, in full compensation for all services rendered by them in criminal cases, a sum not to exceed three hundred dollars each per annum, in the aggregate; and provided, that in the county of San Joaquin constables shall receive the same fees as the sheriff of said county is allowed for like services.

Coroners.

SEC. 24. County coroners in the several counties of this state shall receive for their services compensation as follows:

For general services in holding an inquest, ten dollars.

For each witness subpœnaed, twenty-five cents.

For each mile necessarily traveled, in going to the place of inquest, twenty-five cents.

For directing or attending the interment of each body upon which an inquest has been held, two dollars; which fees shall be all that he shall be entitled to charge.

In the county of Sacramento, for each mile necessarily traveled in holding an inquest, twenty-five cents.

For swearing each witness or juror, twenty-five cents.

For writing down testimony, twenty-five cents per folio.

County surveyor.

SEC. 25. For the first mile actually run with compass and chain, in wood or bush, or salt-marsh and tide lands, four dollars; for each succeeding mile, two dollars.

For each mile run with compass alone, one dollar and fifty cents.

For the first mile actually run with compass and chain, in open land, three dollars; for each succeeding mile, one dollar and fifty cents.

For each mile run with compass alone, one dollar.

For each lot laid out and platted in any city or town, one dollar.

For recording a survey, seventy-five cents.

For calculating the quantity of every tract of land, or any subdivision thereof (town lots excepted), ten cents for each course.

For traveling to the place of survey, for each mile, in going only, thirty cents; and if he shall be required and duly notified, or otherwise, to make other surveys while in the discharge of his official duty, while in the field, he shall be entitled to mileage only from the place last surveyed by him.

For ascertaining the location of every town lot in an old survey, measuring and marking the same, one dollar.

For copies and certificates, per folio, fifteen cents.

For erecting a monument at the corner of any survey, when required, fifty cents.

For erecting a monument, when running a line at a variation or offset, when required, twenty-five cents.

For copy of plat of any survey and certificate required by any person, or to be transmitted to the surveyor-general, one dollar, to be paid by the party requiring the survey.

Expenses of assistants shall be an additional charge, to be agreed upon between the parties; or in cases of surveys ordered by the court or board of supervisors, such compensation as shall be by them allowed.

In the counties of Santa Clara, San Joaquin, Alameda, Tulare, and Kern the fees shall be as follows:

For the first mile run with compass and chain, five dollars

For each succeeding mile, three dollars.

For each mile run with compass alone, one dollar and fifty cents.

For traverse work with compass and chain, ten dollars per day.

For each lot laid out and platted in any city or town, three dollars.

For recording a survey, one dollar.

For calculating the quantity of every tract of land, or any subdivision thereof (town lots excepted), twenty cents for each course.

For ascertaining location of town lots in old survey, and measuring and marking the same, three dollars.

For erecting a monument, when required, at the corner of any survey, one dollar.

For copies, per folio, twenty cents.

For certificates, twenty-five cents.

For traveling fees, going to the place of survey (going only), for each mile, thirty cents.

Expenses of assistants shall be an additional charge, to be agreed upon between the parties.

In cases of surveys ordered by the court or board of supervisors, such compensation as shall be by them allowed.

In the county of Sutter the surveyor shall be allowed to charge and receive the following fees:

For the first mile actually run with compass and chain, in brush-land, four dollars; for each succeeding mile, in brush-land, two dollars.

For the first mile actually run with compass and chain, in open land, two dollars and fifty cents.

For each succeeding mile, in open land, one dollar and fifty cents.

For each mile, with compass alone, one dollar and twenty-five cents.

For each lot laid out and platted in any city or town, one dollar.

For recording survey, one dollar.

For calculating the quantity of every tract of land, or any subdivision thereof (town lots excepted), ten cents for each course.

For traveling to the place of survey, for each mile (in going only), thirty cents; and if he shall be required and duly notified, or otherwise, to make other surveys while in the discharge of his official duty while in the field, he shall be entitled to mileage only from the place last surveyed by him.

For ascertaining the location of every town lot in an old survey, measuring and marking the same, one dollar and fifty cents.

For copies and certificates, per folio, twenty cents.

For erecting a monument, when running a line at a variation or offset, when required, fifty cents.

For copy of plat of any survey, and certificate required by any person, or to be transmitted to the surveyor-general, one dollar and fifty cents, to be paid by the party requiring the same.

Expenses of assistants shall be an additional charge, to be agreed upon between the parties, or in cases of surveys ordered by the court or board of supervisors, such compensation as shall be by them allowed.

Justices of the peace.

SEC. 26. Fees of justices of the peace in the several counties of this state: For filing each paper, twenty-five cents; issuing any writ or process by which suit is commenced, fifty cents; for entering every cause upon his docket, fifty cents; for issuing subpœna, twenty-five cents; for administering an oath or affirmation, twenty-five cents; for each certificate, twenty-five cents; for issuing writ of attachment, or of arrest, or for the delivery of property, fifty cents; for entering any final judgment, for the first folio, one dollar; for each additional folio, twenty cents; for taking or approving [any bond] or undertaking directed by law to be taken or approved by him, fifty cents; for taking justification to a bond, fifty cents; for swearing a jury, fifty cents; for taking deposition, per folio, twenty cents; for entering satisfaction of a judgment, fifty cents; for copy of a judgment, order, docket, proceeding, or paper in his office, for each folio, twenty cents; for issuing commission to take testimony, fifty cents; for issuing supersedeas to an execution, fifty cents; for making up and transmitting transcript and papers on appeal, one dollar and fifty cents; for issuing search-warrants, fifty cents; for issuing an execution, fifty cents; for celebrating marriage and returning certificate thereof to the recorder, five dollars; for all services and proceedings before a justice of the peace in a criminal action or proceeding, whether on examination or trial, three dollars; provided, in the county of Los Angeles the fees in a criminal action shall be collected from the defendant, if convicted, but shall in no case become a county charge; for taking bail after commitment in criminal cases, one dollar; for entering cause without process, one dollar; for entering judgment by confession, and only on affidavit as required in district court, three dollars; for entering every motion, rule, exception, order, or default, twenty-five cents; for taking an acknowledgment of any instrument, for the first name, fifty cents; for each additional name, twenty-

five cents; for all services connected with the posting of estrays, including the transcript for the recorder, two dollars. In cases before justices of the peace when the venue shall be changed, the justice before whom the action shall be brought, for all services rendered in the making up and transmission of the transcript and papers, shall receive two dollars; and the justice before whom the trial shall take place shall receive the same fees as if the action had been commenced before him. All fees of justices of the peace, including those on trial and those on appeal, must be paid before the justice shall be compelled to forward any papers on appeal. For all services appertaining to the coroner's office which the coroner is unable to attend to, the justice of the peace shall receive the same fees as are allowed the coroner for similar services; provided, that in the county of Los Angeles no justice of the peace shall be entitled to receive, in full compensation for all services rendered by him in criminal cases, a sum exceeding three hundred dollars in the aggregate per annum. For transcript of judgment per folio, twenty cents; provided, that in the counties of Amador and Sierra justices of the peace may lawfully charge, demand, and receive the fees allowed by an act to regulate fees of office, approved April tenth, eighteen hundred and fifty-five; provided further, that in the counties of Alameda, Santa Clara, Santa Cruz, Monterey, and Sutter each justice of the peace shall be allowed, in a civil action before him, the following fees, and no other: For all services required to be performed by him before trial, two dollars, and two dollars additional for each writ of attachment or replevin; and for the trial and all proceedings subsequent thereto, including all affidavits, swearing witnesses and jury, and the entry of judgment and issue of execution thereon, three dollars, and twenty-five cents for each hour actually occupied by the trial of each cause; and in all cases where judgment is rendered by default or confession, for all services, including execution and satisfaction of judgment, three dollars; for certificate and papers of appeal, one dollar; for copies of papers or docket, per folio, fifteen cents; for issuing a search-warrant, to be paid by the party demanding the same, fifty cents; for celebrating a marriage, and returning a certificate thereof to the county recorder, three dollars; for taking depositions, per folio, fifteen cents; for administering an oath, and certifying the same, twenty-five cents; for issuing a commission to take testimony, fifty cents; for taking an acknowledgment of any instrument, for the first name, fifty cents; for each additional name, twenty-five cents; for all services and proceedings before a justice of the peace in a criminal action or proceeding, whether on examination or trial, three dollars; for all services connected with the posting of estrays, including the transcript for the recorder, two dollars. In cases before justices of the peace, when the venue shall be changed, the justice before whom the action shall be brought, for all services rendered, including the making up and transmission of the transcript and papers, shall receive two dollars, and the justice before whom the trial shall take place shall receive the same fees as if the action had been commenced before him. All fees of justices of the peace, including those on trial and those on appeal, must be paid before the justice shall be compelled to forward any papers on appeal. For all services appertaining to the coroner's office, which the coroner is unable to attend to, the justice of the peace shall receive the same fees as are allowed the coroner for similar services. [*Amendment, approved March* 1, 1878; 1877–8, 134; *took effect from passage.*]

Supervisors.

SEC. 27. Each member of the board of supervisors shall receive the sum of six dollars per day for each day necessarily employed; and said members shall, in addition thereto, be allowed a mileage of twenty cents per mile, in traveling to and from their residence to the county seat; provided, no charge shall be made for more than one trip going from and returning to the residence of such supervisors, at each term held in any county of this state; provided, that in the county of San Joaquin each member of the board of supervisors shall receive a salary of eight hundred dollars per annum.

And in the county of Amador each member of the board of supervisors shall receive a salary of six hundred dollars per annum.

And in the county of Contra Costa each member of the board of supervisors shall be entitled to receive for his services, for each day's necessary attendance at the meetings of the board, in addition to the mileage, the sum of five dollars per day, but not to exceed in the aggregate, during any one year, three hundred dollars.

And in the county of Santa Cruz each member of the board of supervisors shall receive for his services, for each day's necessary attendance on the business of the county, in addition to the mileage, the sum of four dollars per day, not to exceed in the aggregate, during any one year, four hundred dollars.

In the counties of Humboldt, Mono, and San Diego the per diem and mileage for each supervisor shall not exceed two hundred and fifty dollars per annum.

And in the counties of Marin, Sonoma, Solano, Lake, Los Angeles, and Napa each member of the board of supervisors shall be entitled to receive, in addition to mileage, the sum of five dollars for each day's necessary attendance at the meetings of the board; provided, the chairman be entitled to one dollar per day extra.

And in the counties of Monterey and Santa Clara the per diem of any member of the board of supervisors shall not exceed four hundred dollars per annum; and provided, that in the county of Monterey no extra per diem shall be allowed the chairman, and in said county of Monterey the members of the board shall be allowed twenty-five cents per mile, traveling to and from their residence to the county seat.

And in the county of Butte the per diem of any member of the board of supervisors shall not exceed five hundred dollars per annum.

And in the county of Sutter each member of the board of supervisors shall receive six dollars per day for each day necessarily employed, payable out of the county treasury in the same manner as other county officers are paid; and in addition thereto, twenty cents per mile for every mile necessarily traveled to and from their place of residence to the county seat; said mileage to be allowed only for every regular meeting established by law.

Jurors.

SEC. 28. Grand and trial jurors shall receive two dollars per day for attendance upon a court of record, and twenty-five cents per mile for traveling from their residence to the place of trial; provided, that in the counties of Santa Clara and Santa Cruz they shall receive twenty cents per mile for traveling from their residence to the place of trial. No juror who shall be excused from attendance, upon his own motion, on the first day of his appearance in obedience to the venire, shall receive per diem, but mileage only. In civil cases, the

party in whose favor verdict is rendered, before the same be entered, shall pay the jury fees; but the same may be recovered as costs from the party losing the case; provided, that clerks of courts of record shall keep an account of all moneys received for trials by each juror during the term; and if the sum so received by such juror shall not amount to two dollars per day and mileage, he shall deliver to such juror a certificate of the time and mileage for which he is still entitled to receive pay, which shall be paid out of the county treasury as other county dues. If in any trial in a civil case the jury be for any cause discharged without finding a verdict, the fees of the jury shall be paid by the party who demanded the jury, but may be recovered as costs if he afterwards obtain judgment; and until they are paid, no further proceedings shall be allowed in the action. Jurors in a justice's court, in civil cases, shall receive two dollars per diem, but no mileage, to be taxed against the party losing the suit; provided, that in the counties of Placer, Nevada, Mariposa, Alpine, Amador, Sierra, Humboldt, Klamath, Del Norte, Tuolumne, Mono, Inyo, Fresno, Shasta, Siskiyou, and Merced grand and trial jurors shall receive three dollars per day.

On the first day of each regular meeting of the board of supervisors the clerks of courts of record shall file with the clerk of the board of supervisors of their respective counties a detailed statement containing a list of the jurors, and the amount of fees and mileage earned by each juror and paid out of the county treasury. No allowances shall be made to any clerk for any service performed by him until the statement required by this section shall have been filed as aforesaid. [*Amendment, approved March* 1, 1872; 1871–2, 188; *took effect from passage.*]

Court commissioners.

SEC. 29. The court commissioners shall be entitled to charge and receive for their services the following fees, viz.:

For hearing and determining every ex parte motion for any order or writ, three dollars.

For hearing and determining such contested motions or issues of law or fact as may be referred to them, or for taking proof upon or determining any matter of fact upon which information may be required by the court, five dollars.

For every day spent in the business of the reference in such cases, for examining into the qualifications of sureties on bonds or undertakings, when an exception has been taken to their sufficiency, five dollars.

For taking and certifying every affidavit, and for the approval of every bond or undertaking, fifty cents.

For taking and certifying depositions, twenty-five cents per folio.

For every delinquent-tax case referred to the commissioner, for all the services performed by him, three dollars.

Provided, that in the counties of Contra Costa, Monterey, Santa Clara, Santa Cruz, Solano, and Sutter the court commissioners shall be entitled to charge and receive for their services the following fees:

For hearing and determining every ex parte motion for any order or writ, three dollars.

For taking proof and reporting his conclusions thereon as to any matter of fact upon which information is required by the court, three dollars.

For every day necessarily spent in the business of the reference, for examining into the qualifications of sureties on bonds or undertakings, when an exception has been taken to their sufficiency, three dollars.

For taking and certifying each affidavit, and for the approval of each bond or undertaking, twenty-five cents.

For taking and certifying depositions, twenty cents per folio.

In delinquent-tax cases referred to the commissioner, for all services performed by him, one dollar and fifty cents; said fees to be paid by the party by whom or at whose instance the matter may be brought before said commissioner; or if referred by the court without motion from either party, or if by consent thereby, the plaintiff, and the fees so fixed to be taxed with the costs, against the losing party. Such court commissioner shall have the right to demand his fees, as aforesaid, at the time his services are performed, and may retain any and all papers, in cases when such fees have not been paid, until the same are paid.

County judges.

SEC. 30. County judges shall each receive an annual salary, as herein provided:

In the county of Sacramento, three thousand dollars.

In the counties of Alameda and Mariposa, two thousand five hundred dollars.

In the counties of Amador, Napa, Placer, Santa Clara, Solano, Sonoma, Los Angeles, and San Joaquin, two thousand dollars.

In the counties of Butte, Contra Costa, Merced, Stanislaus, Marin, Mendocino, Siskiyou, Yolo, Sutter, Tehama, and Colusa, one thousand five hundred dollars.

In the counties of Humboldt, Mariposa, Monterey, Plumas, Shasta, Fresno, Santa Cruz, Santa Barbara, San Lufs Obispo, Tuolumne, and Kern, one thousand two hundred dollars.

In the counties of Alpine, Klamath, Lake, Lassen, San Mateo, San Diego, and Trinity, one thousand dollars.

In the counties of Del Norte, Inyo, and Mono, eight hundred dollars.

The foregoing section, relating to the salaries of county judges, has been entirely superseded by the Political Code, sec. 4329.

Witness fees.

SEC. 31. For attending in any civil suit or proceeding before any court of record, referee, commissioner, or justice of the peace, for each day, two dollars; for traveling to the place of trial, for each mile, twenty cents. In case of impeachment and contested elections, for traveling to the place of trial, ten cents per mile. No person shall be obliged to attend or testify in a civil action unless his fees shall have been tendered, or he shall have not demanded the same. No fees shall be allowed any witness in a criminal action or proceeding, unless he shall attend before a grand jury or court of record, as a witness on behalf of the people, upon a subpœna, or by virtue of a recognizance, and it shall appear that he has come from any place out of the county, or that he is poor, the court, if the attendance of the witness be upon a trial, by an order upon its minutes, or in any other case, the county judge, by an order subscribed by him, may direct the treasurer of the county to pay the witness a reasonable sum, to be specified in the order, for his expenses; and no person who resides without any county shall be obliged, in a civil action or proceeding, to attend as a witness in said county, unless the distance be less than thirty miles from his place of residence to the place of trial; provided, that in the county of Monterey witnesses shall be allowed, for attending in any civil suit before any court of record, referee, or commissioner, for each day, two dollars; for travel-

ing to the place of trial, for each mile, twenty cents; before justices of the peace, two dollars for each day, but no mileage.

Judges and clerks of elections.

SEC. 32. The judges and clerks of election shall be allowed such compensation as the board of supervisiors shall prescribe, not exceeding three dollars per day each, for the time they are necessarily employed, and in all the counties of the state, excepting the counties of Solano, San Francisco, Nevada, Los Angeles, Marin, Plumas, Lassen, Humboldt, and El Dorado, said time shall not exceed five days' pay in any one year for each of the judges, and six days for the clerks, which shall be full compensation for all services required by law to be performed. [*Amendment, approved March* 2, 1872; 1871–2, 219, *took effect from passage.*]

Interpreters and translators.

SEC. 33. Interpreters and translators shall be allowed such compensation for their services as the court shall allow, to be taxed and collected as other costs; but the same shall not exceed three dollars per day.

No other fees allowable.

SEC. 34. The officers above named shall receive no other fees for any services performed by them in any action or proceeding, or for the performance of any service for which fees are allowed; and in case of any violation of the provisions of this act the party demanding or receiving any fees not herein allowed shall be liable to refund the same to the party aggrieved, with treble the amount as damages, besides costs of suit, and may be indicted, and if found guilty, shall be fined in a sum not exceeding five hundred dollars, and be removed from office.

Fees paid when service rendered.

SEC. 35. The fees herein allowed shall be payable at the time the service is rendered; and any officer, when it is not otherwise expressly provided by law, may refuse to perform any service, in any suit or proceeding in which there are any fees due (criminal proceedings excepted) from the person applying, until such fees are paid; provided, that if any person shall make an affidavit before the county judge, setting forth that he has a good cause of action or defense, and that he is unable to pay the fees in advance, the county judge may, in his discretion, make an order that the officer perform such service without any pay in advance, or may require such person to give security for the costs, and then require such officer to perform such service; and it shall be the duty of such officer to obey the order of the county judge. Monterey county excepted from the provisions of this section.

Table of fees.

SEC. 36. Every officer herein specified shall prepare and set up in his office a plain table of his fees, as prescribed in this act, within two months of the time when the same goes into effect, in some conspicuous place, for the inspection of all persons, upon pain of forfeiting, for each day, a sum not exceeding twenty dollars, which may be recovered, with costs, by any person, before any justice of the peace of the same county.

Costs of publication in advance.

SEC. 37. When, by law, any publication is required to be made by an officer of any suit, process, notice, order, or other paper, the costs of the same shall be first tendered by the party, if demanded, for whom such order of publication was granted, before the officer shall be compelled to make such publication.

Execution for fees due.

SEC. 38. If any clerk, sheriff, justice of the peace, or constable shall not have received any fees due to him for services rendered in any suit or proceeding he may have execution therefor, in his own name, against the party by whom they are due, to be issued from the court in which the action is pending.

Folio, how construed.

SEC. 39. The term "folio," when used as a measure for computing fees, shall be construed to mean one hundred words, counting every figure necessarily used as a word. Any portion of a folio, when in the whole draught or paper there shall not be a complete folio, and when there shall be an excess over the last folio exceeding one half, shall be computed as a folio.

Mileage.

SEC. 40. When any sheriff, constable, or coroner serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service.

Receipt of fees.

SEC. 41. Every officer, upon receiving any fees for official duty or service, may be required, by the person paying the same, to make out in writing, and deliver to such person, a particular account of such fees, specifying for what they respectively accrued, and shall receipt the same; and if he refuse or neglect to do so when required, he shall be liable to the party paying the same for three times the amount so paid.

Oath of office.

SEC. 42. No fees shall be charged by any officer for administering and certifying the oath of office.

Witness fees.

SEC. 43. The attorney-general, or any district attorney, is authorized to cause subpœnas to be issued, and compel the attendance of witnesses on behalf of the state, without paying or tendering fees in advance, to either officers or witnesses; and any witness refusing or failing to attend, after being served with a subpœna, may be proceeded against, and shall be liable in the same manner as is provided by law in other cases where fees have been tendered or paid.

Witness certificate.

SEC. 44. The clerk of any court before which any witness shall have attended on behalf of the state, in any civil action, shall give to such witness a certificate, under seal, of travel and attendance, which shall entitle him to receive the same from the state treasury on the controller's warrant.

SEC. 45. The provisions of the two preceding sections of this act shall extend to all actions and proceedings brought in the name of the attorney-general, or any other person or persons, for the benefit of the state.

To complete business of office.

SEC. 46. It shall be the duty of all officers in this act named to complete the business of their respective offices to the time of the expiration of their respective terms; and in case any officer, at the close of his term, shall leave to his successor official labor to be performed, for which he has received compensation, or which it was his duty to perform, he shall be liable to pay to his successor the full value of such services, which may be recovered in any court of competent jurisdiction.

No other compensation.

SEC. 47. None of the officers mentioned in this act shall receive any other compensation whatever for any services that now are and may be hereafter required of them in the discharge of their respective offices.

Fee-book.

SEC. 48. It shall be the duty of every officer in this act named, authorized to receive any fees for official services of himself or deputies, to keep a fee-book, in which he shall enter an exact and full account in detail of all fees, commissions, or compensation, of whatever nature or kind, by him or his deputies earned, collected, or chargeable, with the date, the name of the payer, if paid, and the nature of the services in each case. In the first week of January and July, respectively, in every year, he shall file in the office of the clerk of the board of supervisors a sworn statement, in writing, of the amount of fees earned, collected, or chargeable by him or his deputies for official services during the six calendar months ending on the last day of the previous month. If any person shall hold more than one office he may keep a separate fee-book for each office, and may make separate statements for each, or he may keep a joint fee-book and make joint statements, at his discretion. The clerks of the board of supervisors of the several counties of this state are hereby required, respectively, to make an abstract of the amount of fees returned to them as having been earned, collected, or chargeable by the respective officers named in this act, and shall forward the same, duly sworn and certified to, to the secretary of state, in the month of January of every year, to be by him filed in his office.

Penalty for neglect.

SEC. 49. If any officer named in this act shall refuse or willfully neglect to keep a fee-book, or to file a sworn statement, or to make returns to the secretary of state, as herein required, he shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding five hundred dollars, and by a sentence of removal from office, if in office at the time of sentence; and on failure of any officer herein required to make returns to the office of secretary of state, he shall, within thirty days thereafter, give information thereof to the district attorney of the proper county, who shall, without delay, proceed to enforce the provisions of this act.

Fee-book and statement filed with secretary of state.

SEC. 50. All and every officer of the several counties of this state, all local officers resident and officiating therein, under the state laws, and all state officers within this state, not named in this act, who are authorized by law to receive any fees for official services of themselves or deputies, shall keep a fee-book, in which they shall enter an exact and full account, in detail, of all fees, commissions, or compensation, of whatever nature or kind, by them or their deputies earned, collected, or chargeable, with the date, the name of the payer, if paid, and the nature of the service in each case. Within two weeks after the close of their official term they shall deposit said book in the office of the secretary of state. In the first week of January and July of every year they shall file, in the office of the secretary of state, a sworn statement, in writing, of the amount of fees earned, collected, or chargeable, by them or their deputies, for official services during the six calendar months ending on the last day of the previous month.

Statement of fees in Sacramento county.

SEC. 51. In the county of Sacramento the county clerk, sheriff, county recorder, and district attorney, shall, at the end of each month, file with the county auditor a sworn statement of the net amount of fees which they are respectively entitled to charge or receive for services rendered by themselves, their deputies, or clerks, after deducting clerk hire and office expenses, and they shall at the same time pay into the county treasury ten per cent of said net proceeds of fees, which shall by the treasurer be placed to the credit of the county school fund. And if any of the above-named officers shall fail to make such statement as herein provided, or shall willfully neglect or refuse to pay said percentage into the county treasury, he shall be deemed guilty of a misdemeanor, and be punished by a fine of not more than one thousand dollars, or imprisonment for not longer than one year, and may be removed from office.

Counties exempt.

SEC. 52. The city and county of San Francisco is hereby exempted from all the provisions of this act, excepting, however, the provisions of sections two and twenty-two of said act, which are hereby made applicable to said city and county. [*Amendment, approved April* 4, 1870; 1869–70, 680; *took effect from passage.*]

SEC. 53. The county of Nevada is hereby excepted from all the provisions of sections fourteen, seventeen, eighteen, twenty, twenty-seven, thirty, forty-seven, forty-eight, forty-nine, and fifty.

SEC. 54. The counties of San Bernardino, Yuba, and El Dorado are hereby excepted from all the provisions of this act except sections two and fifteen.

County clerk and sheriff of Shasta county.

SEC. 55. The county clerk of the county of Shasta, to include all services rendered as ex officio recorder, auditor, clerk of boards of supervisors, equalization, and canvassers, and to include the pay of deputies and clerk hire, shall receive for compensation all fees allowed by this act to the amount of three thousand dollars per annum; and when the fees, commissions, and percentage allowed by this act to said county clerk as ex officio recorder, clerk of board of supervisors, equalization, and canvassers shall exceed the amount of compensation prescribed in this section, the surplus shall be paid to the county treasurer, to go into the general fund of Shasta county; and provided further, that the sheriff in and for said county of Shasta shall be ex officio collector of taxes; he shall receive, to include the pay of deputies and jailer, in addition to mileage allowed by law, and twelve and a half per cent of the foreign miners' license, the fees, commissions, and percentage, as provided in this act, and the percentage herein allowed for the collection of taxes, other than foreign miners' license, to the amount in the aggregate of three thousand eight hundred dollars per annum, which shall be in full compensation for all services rendered by him, or his deputies, or assistants, as sheriff and ex officio tax collector; and should the fees, commissions, and percentage, exclusive of mileage and twelve and one half per centum of the foreign miners' license, exceed the amount of three thousand eight hundred dollars, the surplus shall be paid by the said sheriff to the county treasurer, and form part of the general fund of Shasta county.

County clerk and sheriff of Sutter county.

SEC. 56. All fees that may be collected by the county clerk of the county of Sutter, for his services as county clerk, including the fees that he may collect and be entitled to receive, under the provisions of this act, as ex officio recorder

and auditor, shall not exceed annually the sum of three thousand dollars, in gold coin; and it is especially provided that all moneys and fees said county clerk shall receive, under the provisions of this act, for his duties as county clerk and ex officio auditor and recorder, over and above the said sum of three thousand dollars per annum, in gold coin, shall be paid over, annually, to the treasurer of said Sutter county for county purposes, and he shall also file monthly with the treasurer a statement under oath of all fees, commissions, and percentage received by him, as earned in his office for official services as clerk, recorder, and auditor. And it is provided further, that all the fees that may be collected by the sheriff of the county of Sutter, under the provisions of this act, either as such sheriff, or ex officio collector of taxes, exclusive of mileage, shall not exceed annually the sum of three thousand eight hundred dollars, in gold coin, which shall be compensation in full for all services rendered by him, or his deputies or assistants, as sheriff and ex officio tax collector; and it is especially provided further, that all moneys and fees, exclusive of mileage, over and above said three thousand eight hundred dollars per annum, in gold coin, shall be annually paid over to the treasurer of Sutter county for county purposes, and he shall also file monthly a statement with the county treasurer, under oath, of all fees, commissions, and percentage, exclusive of mileage, by him received or earned in his office, for official services as sheriff and ex officio tax collector.

Fees in Yuba county.

SEC. 57. Such fees and salaries are allowed to the officers hereinafter named within the county of Yuba, for their services rendered in discharging the duties imposed on them by law, as are hereinafter provided, and such officers may lawfully charge, demand, and receive the same in gold and silver coin of the United States, to and for their own use and benefit respectively.

Clerk of the district court.

SEC. 58. At the commencement of each suit, the clerk shall be entitled to demand and receive from the plaintiff, including judge's docket fee, as prescribed by law, not to exceed the sum of fifteen dollars, to cover costs to the time of judgment, and from the defendant five dollars, to cover his costs for the same time. If, in the progress of an action, the sums above named should prove to be insufficient to cover the costs that may accrue before judgment, the clerk shall be entitled to demand from each party such further sum or sums as he may deem necessary to cover costs of each party respectively up to the time of and including the entry of judgment. Any excess of fees so advanced by either party shall, on the determination of the action, be returned by the clerk to the party who advanced the same.

For entering each suit on the clerk's register of action, and making the necessary entries therein during trial, fifty cents.

For issuing every writ or process under seal, fifty cents.

For issuing each subpœna for one or more witnesses, twenty cents.

For filing each paper, fifteen cents.

For entering every motion and order, rule, default, discontinuance, dismissal, or nonsuit, twenty-five cents.

For calling and swearing every jury, fifty cents.

For entering every cause on the calendar, and making a copy thereof for the bar, for each term of the court, twenty cents.

For receiving and entering each verdict of a jury, twenty-five cents.

For entering every final judgment, for the first folio, fifty cents; and for each subsequent folio, fifteen cents.

For making up and filing every judgment roll, fifty cents.

For each entry of judgment on judgment docket, twenty-five cents.

For each entry of satisfaction of judgment, twenty-five cents.

For taking every oath or affirmation requiring certificate, and certifying to the same, twenty-five cents. For administering oath without certificate, twenty cents.

For copy of any proceeding, record, or paper, for each folio, fifteen cents.

For every certificate under seal, except to oath or affirmation above provided for, fifty cents.

For issuing every commission to take testimony, fifty cents.

For writing down testimony of witnesses during the trial, for each folio, fifteen cents, to be paid by the party requiring the same.

For issuing every execution or other final process under seal, fifty cents.

For issuing every copy of decree or order of sale of mortgaged property, and for every decree or order of sale made by a court of equity, for each folio, fifteen cents.

For a copy of any map, for each course thereon, ten cents; and for letters and figures thereon, for each one hundred, twenty cents.

For receiving and filing every remittitur from the supreme court, and accompanying papers, and making the necessary entries and indorsements required by law upon the receipt and filing of such remittitur, fifty cents.

For approval and justification of each bond required by law, forty cents; and for taking testimony thereon, fifteen cents per folio.

For acknowledgment of deed or other instrument, including all writing and the seal, for each name thereto, fifty cents.

For indexing every suit in the district court, in the general index, as required by law, fifty cents.

For filing and entering papers on transfer of cases from other courts, including the indexing of the same, two dollars.

For transmission of files on transfer of cases to other courts, including the certificate of order of transfer, one dollar and fifty cents.

For searching the records or files of each year, except for suitors or their attorneys, fifty cents.

For issuing a writ of injunction or attachment, fifty cents.

When the district court is sitting as a court of criminal jurisdiction the clerk shall receive no fees or other compensation for any service whatever in a criminal action or proceeding, other than the salary hereinafter provided for criminal service.

Clerk of county court.

SEC. 59. For filing all the papers sent on appeal from justices' court, and making the necessary docket entries in each cause, one dollar and fifty cents.

For all other services, the same fees as are above provided and allowed to the clerk of the district court for similar services.

Clerk of probate court.

SEC. 60. For issuing letters testamentary or of administration, fifty cents.

For all certificates under seal, twenty-five cents.

For writing and posting notices, when required, for each copy, fifty cents.

For recording wills and all other instruments required by law to be recorded, for each folio, fifteen cents.

For filing each paper, fifteen cents.

For certified copies of all papers or proceedings in the probate court, for each folio, fifteen cents.

For all other services, the same fees as are above provided and allowed to the clerk of the district court for similar services.

For each notice given by publication, in addition to cost of publication, fifty cents.

County clerk.

SEC. 61. For issuing every marriage license, one dollar.

For drawing an affidavit, deposition, or other paper, per folio, fifteen cents.

For filing transcript of judgment of justices' court, for docketing the same and issuing execution thereon, if required, two dollars.

For recording certificates of incorporation, where recording is required by law, twenty cents for each folio; and for indexing the same, twenty-five cents.

For recording official bonds, when required by law, fifteen cents per folio; and for indexing the same twenty cents.

For recording the testimony and commitment upon examination of insane persons, when it is ascertained by the county or probate judge that the person committed has sufficient property wherewith to pay the expenses of his commitment, fifteen cents for each folio.

For issuing writs of habeas corpus, when required of him as such clerk, and all services in relation to the same, until a decision thereon, three dollars.

County clerk in certain cases.

SEC. 62. The clerk, when acting as the clerk of the district court or county court, in criminal cases, for the people of the state or the county, and when acting as ex officio clerk of the boards of supervisors, equalization, and canvassers of his county, and for all other duties required of him which are chargeable to his county, shall receive a salary therefor of one thousand five hundred dollars per annum, in gold and silver coin of the United States, payable quarterly out of the county treasury.

County recorder.

SEC. 63. The county clerk, as ex officio county recorder, shall be allowed, for the duties of such office of recorder, as follows:

For recording every instrument, paper, or notice of proceeding required by law to be recorded, for each folio, twenty cents.

For copies of any record or paper, per folio, fifteen cents.

For filing every instrument, paper, or proceeding for record, and making the necessary entries thereon, twenty-five cents.

For indexing every instrument, paper, notice, or proceeding, as required by law, twenty-five cents.

For every certificate under seal, fifty cents.

For every entry of discharge or satisfaction of mortgage, or other instrument or lien, on the margin of the record thereof, and indexing the same, twenty-five cents.

For searching the records and files of the office for each year, when required, fifteen cents.

For abstract or certificate of title, when required, for each conveyance or incumbrance certified, twenty-five cents.

For recording every town plat, or other plat or map, for every course, ten cents; and for figures and lettering of such plats or maps, fifteen cents per

folio; provided, the fees for recording any such plat or map shall not exceed the sum of one hundred dollars.

For taking and writing acknowledgments, including seal, for each signature, fifty cents.

For filing and entering a minute of certificate of all sales required to be filed, fifty cents.

For recording marriage licenses and certificate, one dollar.

For receiving, filing, and keeping each paper not required to be recorded, and indorsing same if required, twenty-five cents.

For recording transcripts, and all other services in estray cases, one dollar.

For recording brands and marks, fifty cents for each brand and mark.

County auditor.

SEC. 64. The county clerk, as ex officio county auditor, shall receive as compensation for the duties required of him by law, a salary of one thousand dollars per annum, to be paid quarterly, pro rata, by the state and county, as now by law provided; and in matters of licenses and poll-tax, such fees and compensation as are now or may be hereafter provided for by the revenue laws of the state.

SEC. 65. The county clerk, as such, and as ex officio clerk of the court of record, and clerk of the boards of supervisors, equalization, and canvassers, and also as ex officio recorder and auditor, shall receive the fees and salaries allowed by the foregoing sections two to eight, inclusive; but should such fees, salaries, or other compensation exceed in the aggregate the sum of five thousand five hundred dollars in any one year, then and in such case any excess above that amount shall, at the end of the official year, be paid into the county treasury to the credit of the general fund.

Sheriff.

SEC. 66. For serving a summons and complaint or any other process by which an action or proceeding is commenced, on each defendant, two dollars.

For taking bond or undertaking, in any case in which he is authorized to take the same, one dollar.

For copy of any writ, process, or other paper, when demanded or required by law, for each folio, twenty cents.

For serving every notice, rule, or order, one dollar.

For serving a subpœna, for each witness summoned, fifty cents.

For serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, two dollars; but no traveling fees shall be allowed on such attachment, order of arrest, or order for the delivery of personal property, when the same accompanies the summons in the suit, and may be executed at the time of the service of the summons, unless for the distance actually traveled beyond that required to serve the summons.

He shall be allowed such further compensation for his trouble and expense in taking and keeping possession of and preserving property, under attachment or execution, or other process, as the court shall order; provided, no more than three dollars per diem shall be allowed to a keeper.

For serving an attachment upon any ship, boat, or vessel, in proceeding to enforce any lien thereon created by law, two dollars; also three dollars per day for each day while such ship, boat, or vessel is in the actual custody of the sheriff, and such further necessary expenses incurred in serving the process, and

resulting from such custody, as are supported by the oath of the officer making such service, and allowed by the court.

For selling any boat, vessel, or tackle, apparel, or furniture thereof, so attached, or other goods attached, and for advertising such sale, the same fees as for sale on execution.

For advertising property for sale on execution, or under any judgment, or order of sale, exclusive of the costs of publication, two dollars.

For commissions for receiving and paying over money on an execution, or other process, when lands or personal property has been levied on and sold, on the first one thousand dollars, two per cent; on all sums above that amount, one per cent.

The commissions for receiving and paying over money on execution without levy, or where the lands or goods levied on shall not be sold, on the first one thousand dollars, one and one half per cent, and one per cent on all over that sum; the fees herein allowed for the levy of an execution, and for advertising, and for making or collecting the money or execution, shall be collected from the judgment debtor by virtue of such execution, in the same manner as the sum therein directed to be made.

For drawing and executing a sheriff's deed, to include the acknowledgment, three dollars, to be paid by the grantee.

For serving a writ of possession or restitution, putting any person entitled into possession of premises and removing the occupant, five dollars.

For attending, when required, on any court, in person or by deputy, for each day, to be paid out of the county treasury, three dollars.

For holding each inquest or trial of right of property, to include all service in the matter, except mileage, five dollars.

For making every arrest in a criminal proceeding, two dollars.

For summoning a grand jury, eight dollars.

For summoning each trial jury of twelve persons, in any case, six dollars: for each additional juror, fifty cents.

For traveling, to be computed in all cases from the court-house, to serve any summons and complaint, or any other process by which action or proceeding is commenced, notice, rule, order, subpœna, venire, attachment on property, or to levy an execution, or to execute an order of arrest, or order for delivery of personal property, writ of possession or restitution, to hold inquest or trial of right of property, or in bringing up a prisoner on habeas corpus, or for service of any process in criminal cases, or for taking prisoner before a magistrate or to prison, for each mile necessarily traveled, in going only, he shall receive twenty-five cents per mile; provided, that if any two or more papers be required to be served in the same suit, at the same time and in the same direction, one mileage only shall be charged; and provided also, in serving a subpœna or venire, when two or more witnesses or jurors live in the same direction, traveling fees shall be charged only for the most distant.

For executing every sentence of death, fifty dollars.

For all service in justice court, the same fees as are allowed to constables.

For delivering a prisoner at the state prison, fifty cents per mile, one way, for the distance established by law from the county seat of his county to the prison; and for every additional prisoner taken at the same time, twenty-five cents per mile.

For delivering an insane person at the asylum, fifty cents per mile, one way,

for the distance established by law from the county seat of his county to the asylum; and for every additional insane person taken at the same time, twenty-five cents per mile; and the sheriff or his deputy shall be the only person authorized to perform that duty.

The sheriff shall be collector of foreign miners' licenses, and he shall receive therefor twenty per centum on the total amount collected.

It is hereby provided that if the fees or other compensation allowed by this section, excepting the percentage of foreign miners' licenses, exceed in the aggregate for any year the sum of seven thousand five hundred dollars, then, and in such case, the excess above such sum shall be paid by the sheriff into the county treasury, to the credit of the general fund.

County surveyor.

SEC. 67. For the first mile actually run with compass and chain, five dollars; for each succeeding mile, four dollars.

For each mile run with compass alone, three dollars.

For each lot laid out and platted, in any city or town, two dollars.

For recording a survey, two dollars.

For calculating the quantity of each made in a tract of land, town lots excepted, one dollar.

For traveling to the place of survey, for each mile, in going only, twenty-five cents; the distance shall be computed from his place of residence, or from where his office is kept, to the place of survey; and if the county surveyor shall be required and duly notified, verbally or otherwise, to make other surveys, while in the discharge of his official duty in the field, he shall only be entitled to mileage from the place last surveyed by him; but if the distance shall be greater from the place last surveyed where his services are required, he shall only be entitled to mileage from the county seat of the county in which he lives; and in no case shall constructive mileage be allowed.

For ascertaining the location of every town lot in an old survey, and measuring and marking the same, three dollars.

For copies and certificates, per folio, twenty cents.

For erecting a monument at the corner of any survey, when required, two dollars.

For copy of a plat of any survey and certificate required by law to be transmitted to the surveyor-general, two dollars, to be paid by party requiring the survey, and not otherwise.

Expenses of assistants shall be an additional [charge] of four dollars per day, or as shall be agreed upon between the parties.

Coroner's fees.

SEC. 67. For summoning a jury of inquest, two dollars.

For swearing a jury, forty cents.

For issuing a subpœna for one or more witnesses, twenty-five cents.

For issuing a warrant of arrest, forty cents.

For each mile necessarily traveled in going to the place of the dead body, twenty cents; which fees, in all inquests, shall be paid out of the effects of the deceased, if any; if not, from the county treasury.

For swearing each witness, twenty-five cents.

For taking down testimony, per folio, twenty cents.

When acting as sheriff, he shall receive the same fees as that officer for like services.

Public administrator.

SEC. 68. The fees of the public administrator shall be four per cent upon the amount of the estates administered upon by him, which percentage shall be the only compensation allowed for his services.

Interpreters and translators.

SEC. 69. Interpreters and translators shall be allowed such compensation for their services as the court shall allow, to be taxed and collected as other costs; but the same shall not exceed three dollars per day.

Judges and clerks of election.

SEC. 70. The judges and clerks of election shall be allowed compensation as the board of supervisors shall prescribe, not exceeding three dollars per day each for the time they are necessarily employed, and not exceeding five days' pay in any one year for each of the judges, and six days for the clerk, which shall be full compensation for all services required by law to be by them performed.

Jurors.

SEC. 71. Grand and trial jurors shall receive two dollars per day for attendance upon a court of record, and twenty cents per mile for traveling from their residence to the place of trial. No juror who shall be summoned and excused from serving shall receive per diem, but mileage only; nor shall mileage be paid to any juror who shall live within two miles of the court-house; nor shall any juror receive per diem who shall be summoned to complete a jury, but who for any cause shall be excused. In civil causes, the party in whose favor verdict is rendered, before the same be entered, shall pay the jury fees; but the same may be recovered as costs from the party losing the case; provided, that the clerk of courts of record shall keep an account of all moneys received for trials by each juror during the term; and if the sum so received by such juror shall not amount to two dollars per day and mileage, he shall deliver to such juror a certificate of the time and mileage for which he is still entitled to receive pay, which shall be paid out of the county treasury as other county dues. If, in any trial in a civil case, the jury be for any cause discharged without finding a verdict, the fees of the jury shall be paid by the plaintiff, but may be recovered as costs if he afterwards obtains judgment; and until they are paid no further procedings shall be allowed in the action.

Jurors in a justice's court in civil cases shall receive two dollars per day, but no mileage, to be taxed against the party losing the action.

Witness fees.

SEC. 72. For attending in any civil suit or proceeding before any court of record, referee, commissioner, or justice of the peace, for each day, two dollars.

For traveling to the place of trial, for each mile, twenty cents.

In cases of impeachment and contested elections, for traveling to the place of trial, ten cents per mile.

No person shall be obliged to attend or testify in a civil action unless his fees shall have been tendered, or he shall not have demanded the same. No fees shall be allowed any witness in a criminal action or proceeding, unless he shall attend before a magistrate, grand jury, or court, as a witness on behalf of the people, upon a subpœna or by virtue of a recognizance; and if it shall appear that he has come from any place out of the county, or that he is poor, the court, if the attendance of the witness be upon a trial, by an order on its minutes, or in any other case the county judge, by an order subscribed by him, may direct

the treasurer of the county to pay the witness a reasonable sum, to be specified in the order, for his expenses; and no person who resides without the county shall be obliged, in a civil action or proceeding, to attend as a witness in said county, unless the distance be less than thirty miles from his place of residence to the place of trial.

Justices of the peace.

SEC. 73. Each justice of the peace shall be allowed, in a civil action before him, for all services required to be performed by him before trial, two dollars; and for the trial, and all proceedings subsequent thereto, including all affidavits, swearing witnesses and jury, and the entry of judgment and issue of execution thereon, five dollars; and in all cases where judgment is rendered by default or confession, for all services, including execution and satisfaction of judgment, three dollars.

For all services and proceedings in a criminal action or proceeding, whether on examination or trial, three dollars.

For taking bail, after commitment by another magistrate, fifty cents.

For certificate, and transmitting transcript and papers on appeal, one dollar and fifty cents.

For copies of papers on docket, per folio, fifteen cents.

For issuing a search-warrant, to be paid by the party demanding the same, fifty cents.

For celebrating a marriage, and returning a certificate thereof to the county recorder, five dollars.

For taking an acknowledgment of any instrument, for the first name, fifty cents; for each additional name, twenty-five cents.

For taking depositions, per folio, fifteen cents.

For administering an oath and certifying the same, twenty five cents.

For issuing a commission to take testimony, fifty cents.

For all services connected with the posting of estrays, including the transcript for the recorder, two dollars.

In cases before justices of the peace, where the venire shall be changed, the justice before whom the action shall be brought, for all services rendered, including the making up and transmission of the transcript and papers, shall receive two dollars; and the justice before whom the trial shall take place shall receive the same fees as if the action had been commenced before him.

Constables' fees.

SEC. 74. For serving summons in civil cases, for each defendant, fifty cents.

For summoning any jury before a justice of the peace, one dollar.

For taking a bond, required by law to be taken, fifty cents.

For summoning each witness, fifteen cents.

For serving an attachment against the property of a defendant, one dollar and fifty cents.

For summoning and swearing a jury to try the right of property, and taking the verdict, one dollar and fifty cents.

For receiving and taking care of property on execution, attachment, or order, his actual necessary expenses, to be allowed by the justice who issued the execution, upon the affidavit of the constable that such charges are correct, and the expenses were necessarily incurred.

For collecting all sums on execution, two per cent, to be charged against the defendant in the execution.

For serving a warrant or order for the delivery of personal property, or for making an arrest in civil cases, one dollar and fifty cents.

For making an arrest in criminal cases, one dollar and fifty cents.

For every mile necessarily traveled, in going only, to serve any civil or criminal process or paper, or to take a prisoner before a magistrate or to prison, twenty cents; but when two or more persons are summoned or served in the same suit, mileage shall be charged only for the most distant, if they live in the same direction.

For making sales of estrays, the same fees as for sales on execution.

For all other services, the same fees as are allowed to sheriffs for similar services.

Court commissioners.

SEC. 75. For hearing and determining every ex parte motion, for any order or writ, two dollars.

For taking proof and reporting his conclusions thereon, as to any matter of fact upon which information is required by the court, two dollars.

For every day necessarily spent in the business of the reference, for examining into the qualifications of sureties on bonds or undertakings, when an exception has been taken to their sufficiency, two dollars.

For taking and certifying each affidavit, and for the approval of each bond or undertaking, twenty-five cents.

For taking and certifying depositions, fifteen cents per folio, and said fees to be paid by the party by whom or at whose instance the matter may be brought before such commissioner; or, if referred by the court, without motion from either party, or if by the consent of the parties, then by plaintiff; the fees so paid to be taxed as costs, if the party paying the same be the prevailing party. In delinquent-tax cases, referred to the commissioner, for all services performed by him, one dollar.

Salary of county judge.

SEC. 76. The county judge shall receive an annual salary of two thousand four hundred dollars, payable to him monthly out of the county treasury.

Fees and salary of district attorney.

SEC. 77. The district attorney shall be allowed for his services a salary of one thousand dollars per annum, payable quarterly out of the county treasury, and the following fees:

For each conviction for felony, when the punishment is death, fifty dollars.

For each conviction for other felony, twenty-five dollars.

For each conviction for misdemeanor, fifteen dollars, which said sum shall be assessed against the person convicted, and if the same cannot be collected from him, then it shall be considered a county charge, and be audited by the board of supervisors and payable out of the county treasury.

For all collections on bonds or forfeited recognizances, ten per centum.

For every conviction under the act to prohibit gaming, and the act to prohibit lotteries, raffles, gifts, gift enterprises, and other schemes, to be collected out of the fine or fines imposed upon the party convicted, fifty dollars.

For services rendered in the collection of delinquent taxes, in each case where the tax does not exceed fifteen dollars, if paid before judgment, a fee of one dollar and fifty cents; if paid after judgment, a fee of two dollars and twenty-five cents; and in each case where the tax exceeds fifteen dollars, ten per centum on the sum recovered and collected, if paid before judgment, and if not so

paid, then fifteen per centum to be added to and to constitute a part of the judgment; provided, that in no case shall the state or county be liable for such per centum.

For all amounts collected by him for the state or county by action, ten per centum on the amount collected; provided, that in no event shall the per centum in any one case exceed five hundred dollars; provided, should the salary, fees, and other compensation allowed by this section, exceed in the aggregate, for any one year, the sum of three thousand dollars, then, and in such case, any excess above such sum of three thousand dollars shall, at the end of the official year, be paid by the district attorney into the county treasury, to the credit of the general fund.

County assessor.

SEC. 78. The county assessor shall be allowed for his services a salary of three thousand dollars per annum, payable quarterly out of the county treasury. He shall collect all state and county taxes upon personal property situate outside of the corporate limits of the city of Marysville, assessed to persons having no real estate, or improvements upon real estate, assessed to such persons; also, all state poll-taxes from all persons residing within the county and outside said corporate limits of the city of Marysville, and shall be entitled and allowed to receive and retain therefor the following percentage:

For the collection of property taxes, two per cent of the total amount collected; and for poll-taxes, fifteen per cent of the total amount collected.

County superintendent of public schools.

SEC. 79. The county superintendent of public schools shall be allowed and receive for his services a salary of one thousand dollars, together with fifty dollars to be used for postage and expressage in the business of his office, to be paid quarterly out of the county treasury, and reasonable traveling expenses to be allowed by the board of supervisors of said county, while in the discharge of his official duties.

Supervisors.

SEC. 80. The supervisors of the county of Yuba shall each be allowed eight dollars per day for each day's actual attendance at the meetings of the board of supervisors, and of the boards of equalization and canvassers, and mileage at the rate of twenty cents per mile, in going only, from their residence to the county court-house; provided, always, that the chairman of the board shall receive no other or greater compensation than as herein provided; and it is hereby declared to be unlawful for said supervisors, or any of them, to take or receive any constructive or other per diem, though they should sit as a board of supervisors, a board of equalization, and a board of canvassers on the same day.

Salary and fees of the county treasurer, as such, and as ex officio collector of taxes and licenses and poll-taxes.

SEC. 81. The county treasurer, as such, shall be allowed and receive a yearly salary of one thousand five hundred dollars, payable quarterly, out of the county treasury, in compensation for the services required of him as county treasurer; and he shall be allowed and entitled to receive and retain, as ex officio collector of taxes and licenses, the following percentage of fees, viz.:

For the collection of poll-taxes from all persons residing within the corporate limits of the city of Marysville, fifteen per centum of the total amount collected.

For every license sold, he shall be entitled to demand and receive, as a fee,

the sum of one dollar, to be paid by the party procuring the license, one half of which shall go to the auditor.

For the collection of all other taxes or moneys he shall receive two per centum of the total amount collected and paid over by him.

The said treasurer, as such, and as such ex officio collector of taxes and licenses, shall be entitled to have and retain the foregoing salary and percentage and fees in this section named, to and for his own use and benefit, and shall receive no other or greater compensation for any duties that are or may be required of him as such officer and ex officio officer; but he shall collect all other fees, money, and percentage which by law now are or hereafter may be allowed for any other duties of his said offices, and pay the same into the general fund of the county treasury quarterly and before the payment of his quarterly salary; and he shall at the same time file with the county auditor a statement, under oath, of the items and amount of the same; provided, that if the salary, percentage, and fees allowed by this section to be retained by said treasurer and ex officio collector of taxes, for his own use and benefit, shall exceed in the aggregate, during any year, the sum of thirty-five hundred dollars, then, and in such case, any excess above such sum of thirty-five hundred dollars shall, at the end of the official year, be paid by him into the county treasury, to the credit of the general fund.

MISCELLANEOUS PROVISIONS.

Tables of fees.

SEC. 82. Every officer whose fees are herein ascertained shall publish and set up in his office fair tables of his fees, according to this act, within one month after this act goes into effect, in some conspicuous place, for inspection of all persons who have business in his office, upon pain of forfeiting, for each day, a sum not exceeding twenty dollars, which may be recovered by any person by action before any justice of the peace of the same county, with costs.

Costs of publication.

SEC. 83. When, by law, any publication is required to be made by an officer of any suit, process, notice, order, or other paper, the costs of such publication shall be first tendered by the party, if demanded, for whom such process or order was granted, before the officer shall be compelled to make publication thereof.

Execution of fees.

SEC. 84. If any clerk, sheriff, justice of the peace, or constable shall not have received any fees which may be due him for services rendered in any suit or proceeding, he may have execution therefor, in his own name, against the party from whom they are due, to be issued from the court in which the action is pending.

Services not chargeable.

SEC. 85. The secretary of state, state treasurer, and controller, the attorney-general and district attorneys, shall be authorized to require searches in the respective offices of the officers whose fees are hereby provided for, and in the office of the clerk of the district court, of the county court, of the probate court, of the recorder's court, for any papers, records, or documents necessary to the discharge of the duties of their respective offices, and to require copies thereof and extracts therefrom, without the payment of any fee or charge whatever.

Folio, how construed.

SEC. 86. The term "folio," when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every

figure necessarily used as a word. Any portion of a folio, when in the whole draught or paper should there not be a complete folio, and when there should be an excess over the last folio exceeding a quarter, shall be computed as a folio. The filing of a paper shall be construed to include the certificate of the same.

Mileage.

SEC. 87. When any sheriff, constable, or coroner serves more than one process in the same case, not requiring more than one journey from his office, he shall receive mileage only for the most distant service.

No fees as witness.

SEC. 88. No counselor or attorney at law in any case shall be allowed any fees for attendance as a witness in any such cause.

Receipt for fees.

SEC. 89. Every officer upon receiving any fees for official duty or services may be required by the person making the same to make out in writing and deliver to such person a particular account of such fees, specifying for what they respectively accrued, and shall receipt for the same; and if he refuse or neglect to do so, when required, or shall receive illegal fees, he shall be liable to the party paying for three times the amount so paid.

Oath of office.

SEC. 90. No fees shall be charged by any officer for administering or certifying the oath of office.

No other compensation.

SEC. 91. Officers whose fees and compensation are set forth in this act shall not be entitled to charge or receive any fees, compensation, or salary not herein enumerated and provided for.

Witness fees.

SEC. 92. The attorney-general or any district attorney is authorized to cause subpœnas to be issued and compel the attendance of witnesses on behalf of the state, without paying or tendering fees in advance to any officers or witnesses; and any witness failing or neglecting to attend, after being served with a subpœna, may be proceeded against and shall be liable in the same manner as provided by law in other cases when fees have been tendered or paid.

SEC. 93. The clerk of any court at which any witness shall have attended on behalf of the state in a civil action shall give to such witness a certificate, under seal, of travel and attendance, which shall entitle him to receive the same from the state treasury on the controller's warrant.

No other fees.

SEC. 94. No other fees shall be charged than those specifically set forth herein, nor shall any fees be charged for any other services than those mentioned in this act.

Fee-book.

SEC. 95. It shall be the duty of each and every one of said officers hereinbefore mentioned to keep severally a book, to be called a "fee-book," in their respective offices, open to the inspection of any one desiring to inspect the same, in which book shall be stated the fees charged, and the services for and the title of the case in which they are charged; and it shall be the duty of the district attorney to inspect said books at least once in every three months; and the foreman of each and every grand jury shall also have the same before him, and shall examine the same.

SEC. 96. The provisions of sections thirty-six and thirty-seven of this act shall extend to all actions and proceedings brought in the name of the attorney-general, or any other person or persons, for the benefit of the state.

Acts repealed.

SEC. 97. An act entitled "An act to regulate fees in office," approved April tenth, eighteen hundred and fifty-five, excepting and reserving section seventy-three of that act; and an act supplementary thereto, approved April thirtieth, eighteen hundred and fifty-five; and an act entitled "An act to amend an act to regulate fees in office," approved April thirtieth, eighteen hundred and fifty-five; and an act entitled "An act amendatory of an act entitled, 'An act to regulate fees in office,'" approved April first, eighteen hundred and fifty-six; and an act entitled "An act to amend an act to regulate fees in office," approved April fifth, eighteen hundred and fifty-six, so far as they affect the county of Yuba; and an act entitled "An act to regulate fees in office in the county of Yuba," approved April twenty-eighth, eighteen hundred and fifty-seven; and an act entitled "An act to amend an act entitled 'An act to regulate fees in office in the county of Yuba,' approved April twentieth, eighteen hundred and fifty-seven," approved April twenty-fourth, eighteen hundred and fifty-eight; and an act entitled "An act to amend an act entitled 'An act to regulate fees in office in the county of Yuba,' approved April twenty-eighth, eighteen hundred and fifty-seven," approved April twenty-sixth, eighteen hundred and fifty-eight; and an act entitled "An act to regulate fees in office in the county of Yuba," approved April twenty-first, eighteen hundred and sixty; and an act entitled "An act to amend an act to regulate fees in office in the county of Yuba, approved April twenty-first, eighteen hundred and sixty," approved May second, eighteen hundred and sixty-two; and an act entitled "An act concerning the assessing and collecting of revenue in the county of Yuba, approved April second, eighteen hundred and sixty-six, so far as the same relates to or makes provision for the fees, percentage, compensation, or salary of any officer in and for Yuba county; and an act entitled "An act to amend an act concerning the assessing and collecting of revenue in the county of Yuba, approved April second, eighteen hundred and sixty-six," approved March twentieth, eighteen hundred and sixty-eight; and an act entitled "An act to regulate fees in office," approved March twenty-eighth, eighteen hundred and sixty-eight, so far as the same applies to or is made applicable to the county of Yuba; and an act entitled "An act to regulate salaries and fix the compensation of certain officers," approved March twenty-eighth, eighteen hundred and sixty-eight, so far as the same provides for the payment of all, every, or any of the officers of said Yuba county, or fixes, or establishes, or declares what shall be their or any of their fees, percentage, salaries, or other compensations, or makes any provisions touching or concerning the pay, compensation, fees, or salaries of any officers of said Yuba county, contrary to, or different from, or inconsistent with the provisions of this act; and all other acts or parts of acts inconsistent or in conflict with the provisions of this act—are hereby repealed.

SEC. 98. The act entitled "An act to regulate fees of office," approved March twenty-eighth, eighteen hundred and sixty-eight; and the act entitled "An act to regulate salaries and fix the compensation of certain county officers," approved March twenty-eighth, eighteen hundred and sixty-eight, and all acts or parts of acts, so far as the same are in conflict with the provisions of this act—are hereby repealed; provided, that said act to regulate salaries and fix the compen-

sation of certain county officers, approved March twenty-eighth, eighteen hundred and sixty-eight, is hereby continued in force in the counties of Sierra and Siskiyou; provided, that section twenty-two of an act entitled "An act to regulate salaries and fix the compensation of certain county officers," approved March twenty-eighth, eighteen hundred and sixty-eight, so far as the same is applicable to the county of Butte, is hereby repealed; and provided further, that nothing herein contained shall be construed to affect or impair the tenure of office of the county assessor of Placer county, who was elected at the general election held in said county in the year eighteen hundred and sixty-nine.

SEC. 99. This act shall take effect from and after its passage.

References to special and local acts regulating fees and salaries, and more or less affecting the foregoing general fee-bill.—*Alameda county.*—Fixing the salaries of certain county officers, 1871-2, 720.

To abolish office of county assessor and create township assessors, 1873-4, 90.

Fixing the salaries of certain officers, 1873-4, 185; 1875-6, 166.

Compensation of deputy sheriff, 1873-4, 601.

To regulate fees, 1875-6, 127.

Fixing compensation of under-sheriff, deputy sheriffs, and county jailers, 1877-8, 950.

Alpine county.—To provide for the payment of salaries and fees, 1871-2, 703.

Regulating traveling fees of sheriffs and constables, 1873-4, 236.

Regulating traveling fees of sheriff and constables, 1877-8, 372.

Amador county.—The foregoing act of March 5, 1870, is in force, except as changed by the act cited as follows: Regulating salaries and fixing compensation of county officers, 1875-6, 370.

Butte county.—Fees of witnesses and jurors in criminal cases, 1871-2, 233; 1873-4, 508.

Salary of county assessor, 1871-2, 270.

Salary and fees of treasurer and auditor, 1871-2, 709.

Fees of district attorney for convictions, 1871-2, 799; 1873-4, 733.

Salary of superintendent of public schools, 1873-4, 170.

Fixing salaries and compensation of certain officers, 1873-4, 733; 1875-6, 753, 906.

Amending act of March 27, 1874, fixing salaries, 1877-8, 248.

Making sheriff collector of licenses, etc., 1877-8, 287.

Concerning office of sheriff, 1877-8, 567.

Regulating justice's fees, 1877-8, 683.

Calaveras county.—Instead of the foregoing act, the first below-cited act applies to this county, modified by the acts subsequently referred to.

An act to regulate fees and salaries in the county of Calaveras, and to define the duties of certain officers in said Calaveras county, approved March 4, 1870; 1869-70, 133; supplemented March 1, 1872; 1871-2, 177; amended March 16, 1872; 1871-2, 385; and again supplemented January 8, 1874; 1873-4, 13.

Applying certain portions of the foregoing printed act of March 5, 1870, to Calaveras county, 1871-2, 910.

Concerning officers of supervisor and district attorney, 1875-6, 141.

Regulating constables' fees, 1877-8, 592.

Colusa county.—Authorizing levy of special tax to pay salaries of county judge and district attorney, 1871-2, 98.

An act to regulate fees of office and salaries of certain officers in the county of Colusa, and to repeal all acts now in force in relation thereto, approved March 30, 1874; 1873-4, 873.

Relating to justices' fees, 1877-8, 782.

Contra Costa county.—An act to regulate fees of office, and to fix the compensation of certain officers in the county of Contra Costa, approved March 2, 1876; 1875-6, 84.

An act to regulate salaries and to fix the compensation of certain officers in the county of Contra Costa, approved March 2, 1876; 1875-6, 91.

An act to fix the compensation of assessors for the collection of taxes on personal property in the county of Contra Costa, approved March 29, 1876; 1875-6, 529.

Fixing fees of justices of the peace, 1877-8, 269.

Del Norte county.—The foregoing act of March 5, 1870, is in force.

Salary of superintendent of public schools, 1875-6, 507.

El Dorado county.—An act to regulate fees and salaries of officers and defining their duties in the county of El Dorado, and other matters relating thereto, approved March 5, 1870; 1869-70, 198; amended March 16, 1872; 1871-2, 412; March 27, 1872; 1871-2, 592; April 1, 1872; 1871-2, 894; and March 27, 1874; 1873-4, 710.

To provide for election of treasurer and collector and fix their compensation, 1871-2, 377.

To levy special tax for salary fund and fixing salary for two years of district attorney, 1871-2, 793.

Creating board of canvassers, 1873-4, 5.

Creating board of auditors, 1873-4, 825.

Fixing salaries of certain officers, 1877-8, 778.

Fresno county.—To fix salary and bond of treasurer, 1873-4, 236.

To fix salary of county judge, 1873-4, 349.

Separating offices of auditor and recorder, and regulating salaries, 1875-6, 151, 363.

Fixing salary and bond of treasurer, 1877-8, 255.

Humboldt county.—Fixing compensation of treasurer and assessor, 1871-2, 169.

Fixing compensation of sheriff as jailer, 1871-2, 797.

Fixing compensation of certain officers (assessor and school superintendent), 1873-4, 109.

Act annexing portion of Klamath county to Humboldt, 1873-4, 755.

Fixing compensation of county clerk, 1875-6, 81.

Inyo county.—In relation to fees of district attorney, 1871-2, 799.

Fixing salaries of certain officers (county judge and district attorney), 1873–4, 177, 510.
Regulating traveling fees of sheriff and constable, 1873–4, 236.
Fixing compensation of assessor, 1875–6, 81.
Fixing salary of treasurer, 1877–8, 157.
Fixing compensation of assessor, 1877–8, 256.
Regulating traveling fees of sheriff and constables, 1877–8, 372.

Kern county.—Regulating traveling fees of sheriff, 1871–2, 141; 1873–4, 45.
Fixing salary and bond of treasurer, 1873–4, 236.
Fixing salary of county judge, 1873–4, 349.
Separating offices of auditor and recorder, and regulating salaries, 1875–6, 151, 363.
Fixing salary and bond of assessor, 1875–6, 172.
Fixing salary and bond of treasurer, 1877–8, 255.
Regulating traveling fees of sheriff, 1877–8, 559.

Klamath county.—Act annexing Klamath to Humboldt and Siskiyou counties, 1873–4, 755.

Lake county.—Fixing salary of district attorney, 1871–2, 441.
Concerning county officers, and regulating fees and salaries, 1875–6, 599.
Amending act of March 21, 1876, regulating fees and salaries, 1877–8, 256.

Lassen county.—Fixing salary of district attorney, 1871–2, 189.
Regulating fees, 1877–8, 683.

Los Angeles county.—Concerning the offices of county clerk and county surveyor, 1869–70, 380.
Regulating pay of grand jurors, 1871–2, 37.
Fixing salary of county judge, 1871–2, 62.
Concerning compensation of certain county officers, 1871–2, 158; 1873–4, 342, 348.
Relating to fee-books and quarterly reports of officers, 1873–4, 616.
Regulating fees of sheriff, 1875–6, 130.
Fixing compensation of assessor for collecting tax on personal property, 1875–6, 570.
Regulating fees and salaries, 1877–8, 574.

Marin county.—Fixing salary of superintendent of public schools, 1873–4, 212.
Fixing compensation of certain officers, 1873–4, 433.

Mariposa county.—Regulating salaries of certain officers, 1873–4, 83.
In relation to collection of licenses by tax collector, 1875–6, 508.

Mendocino county.—Fixing salaries of certain officers, 1873–4, 174.
Regulating fees of certain officers, 1873–4, 539.
Fixing fees of recorder, 1877–8, 183.

Merced county.—To separate office of recorder from that of clerk, and regulate salaries of certain officers, 1873–4, 660.
Regulating fees of witnesses in criminal cases, 1873–4, 732; repealed 1875–6, 493.
In relation to collection of licenses by tax collector, 1875–6, 508.
Regulating salaries of assessor and sheriff, 1877–8, 107.
Fixing salary of district attorney, 1877–8, 137.

Modoc county.—Act creating and regulating Modoc county, 1873–4, 124.
Regulating fees and salaries, 1877–8, 140, 454.

Mono county.—Fixing compensation of assessor, 1873–4, 708.

Monterey county.—Fixing salary of superintendent of common schools, 1871–2, 316.
Concerning fees of sheriff, 1871–2, 419.
Reorganizing supervisional districts, 1873–4, 203.
Regulating fees and salaries, 1877–8, 863.

Napa county.—Concerning office of county clerk, 1869–70, 368.
In reference to county assessor, 1871–2, 437.
To fix fees of county surveyor, 1873–4, 108.
Reorganizing board of supervisors, 1873–4, 158.
Regulating salaries and fixing compensation of certain officers, 1873–4, 392.
Regulating fees of sheriff, 1877–8, 551.

Nevada county.—An act to regulate the salaries and fix the compensation of certain county officers in the county of Nevada, approved March 5, 1870; 1869–70, 142; amended April 1, 1872; 1871–2, 843.
Regulating fees and mileage in criminal cases, 1875–6, 404.
Regulating salaries and fixing compensation of certain officers, 1877–8, 551.

Placer county.—Regulating fees of justices and constables, 1869–70, 805.
Relating to fees of district attorney, 1871–2, 799.
Fixing salary of county recorder, 1873–4, 702.
Concerning fees of recorder, 1877–8, 268.

Plumas county.—Fixing salary of district attorney, 1871–2, 733.
Regulating fees of tax collector, 1873–4, 382.
Relating to certain officers and fixing compensation, 1877–8, 547.

Sacramento county.—In relation to president and clerk of board of supervisors, 1871–2, 721.
Fixing compensation of district attorney, 1871–2, 863.
An act to regulate the fees of office, and to fix the compensation of the county officers in the county of Sacramento, approved February 28, 1874; 1873–4, 204; supplemented March 27, 1874; 1873–4, 713; and March 30, 1874; 1873–4, 794.
The above-cited act repeals the foregoing mentioned acts, and is the act in force, except as modified by the following acts:
Regulating fees of justices of the peace and constables, 1873–4, 863.
Relating to government of county of Sacramento, 1873–4, 909.

San Benito county.—Act creating county and providing for organization, 1873–4, 95.

San Bernardino county.—Regulating fees of constables, 1865–6, 822.
Fixing fees of witnesses in criminal actions, 1869–70, 219.
An act to regulate fees of office and salaries of officers in San Bernardino county, approved March 23, 1872; 1871–2, 490; amended February 18, 1874; 1873–4, 130.
Fixing salary of county judge, 1873–4, 101.
Relating to fee-books and quarterly reports, 1873–4, 616.
Concerning salary of district attorney, 1875–6, 389.
Concerning fees and salaries of certain officers, 1877–8, 80.

San Diego county.—Providing for government of county, 1871–2, 191.
Fixing salary of county judge, 1873–4, 101.
Fixing compensation of assessor, 1873–4, 443.
Relating to fee-books and quarterly reports, 1873–4, 616.

Providing for government of county, 1875–6, 558.

Regulating fees and salaries, 1875–6, 586.

Amending act of March 31, 1876, as to fees of assessor, 1877–8, 128.

San Francisco city and county.—The foregoing printed act of March 5, 1870, does not apply to the city and county of San Francisco, except so far as sections 2 and 22 are concerned. Except as provided by the acts hereinafter referred to, the old act of April 10, 1855, 81, as modified by subsequent acts (all of which will be found collated in "General Laws," secs. 2986 et seq.), seems to apply, so far as fees are concerned. As to salaries, reference must be had to the consolidation act and multifarious subsequent legislation, referred to under the head of San Francisco city and county. The following acts modify the acts above referred to, collated in the "General Laws:"

To regulate fees (clerks of various courts, percentage, etc.), 1865–6, 66; 1871–2, 93.

Fees of jurors and witnesses, 1865–6, 122.

Fees of assistant city and county attorney, 1871–2, 46. [This office was abolished by section 25 of act of April 1, 1872, 1871–2, 804.]

In relation to coroners, 1871–2, 403; 1873–4, 908.

Relating to office of sheriff, 1877–8, 355.

Fixing salary of mayor's clerk, 1877–8, 1023.

San Joaquin county.—To regulate salaries and fix compensation of county officers, 1871–2, 874; repealed by an act to regulate salaries and fix compensation of county officers, 1873–4, 575.

Making county treasurer ex officio tax collector, 1873–4, 692.

Fixing salary of county judge, 1877–8, 782.

San Luis Obispo county.—An act to regulate fees of office and salaries of certain officers in the county of San Luis Obispo, approved March 29, 1870; 1869–70, 437; amended March 19, 1872; 1871–2, 425; amended and supplemented April 3, 1876; 1875–6, 912.

Fixing salaries of certain officers, 1873–4, 618.

Fixing salaries and compensation of certain officers, 1875–6, 608.

Fixing compensation of district attorney, 1877–8, 451.

Relating to fees of recorder, 1877–8, 701.

San Mateo county.—Prescribing duties and providing salaries of certain officers, etc., 1873–4, 479, 779.

Relating to salaries of certain officers, 1877–8, 583.

Santa Barbara county.—Fixing salaries of certain officers, 1873–4, 618.

Concerning office of county clerk, 1875–6, 212.

Santa Clara county.—Regulating fees of county clerk, 1871–2, 212; 1875–6, 402.

Payment of deputies of clerk and auditor, 1871–2, 859.

As to compensation, fees, and percentage of tax collector, 1873–4, 102.

Regulating fees of county recorder, 1873–4, 230.

In relation to county officers, their fees and salaries, 1873–4, 610.

In relation to county officers, their fees and salaries, 1875–6, 35, 363.

Relating to fees and salaries, 1877–8, 288.

Relating to the fees of coroner, 1877–8, 426.

Santa Cruz county.—To regulate fees of sheriff, 1871–2, 331.

In relation to county officers, their fees and salaries, 1875–6, 576.

Fixing salaries of supervisors, 1877–8, 155.

Relating to juries and mileage of witnesses in criminal cases, 1877–8, 564.

Shasta county.—In relation to fees of district attorney, 1871–2, 799.

Fixing salary of county clerk, 1873–4, 168.

Allowing sheriff compensation for services of under-sheriff, 1873–4, 180.

Sierra county.—Regulating certain fees, 1865–6, 272.

Regulating salaries and fixing compensation of certain officers, 1867–8, 448.

An act in relation to the county officers of the county of Sierra, approved March 12, 1870; 1869–70, 285.

Concerning office of treasurer, 1873–4, 185.

Siskiyou county.—An act to regulate fees of office and salaries of officers in Siskiyou county, approved March 12, 1870; 1869–70, 249; supplemented February 27, 1874; 1873–4, 188; and March 27, 1874; 1873–4, 719.

Act annexing portion of Klamath to Siskiyou county, 1873–4, 755.

Solano county.—To better define duties and fix compensation of certain officers, 1871–2, 624.

To regulate official salaries, 1873–4, 869; 1875–6, 56.

Regulating official salaries, 1877–8, 536.

Sonoma county.—Concerning fees and salaries of certain officers, 1871–2, 583.

Fees of county surveyor, 1873–4, 228.

To regulate salaries and fix compensation of certain county officers, 1873–4, 382, 720; amended 1875–6, 576, 726.

Regulating fees and salaries, 1877–8, 129, 328.

Stanislaus county.—To regulate salary of county recorder, 1871–2, 183.

To separate office of recorder from that of clerk, and to regulate salaries of certain officers, 1873–4, 277, 448.

Regulating salaries of certain officers, 1877–8, 1001.

Concerning offices of public administrator, coroner, and superintendent of public schools, 1873–4, 537.

Fixing compensation of school superintendent, 1873–4, 537.

Regulating fees of witnesses in criminal cases, 1873–4, 732; repealed, 1875–6, 493.

Sutter county.—The foregoing act of March 5, 1870, is in force.

A section of an act relating to convictions for felony and misdemeanor, and district attorney's fees in Lake county, applies also to Sutter county. See sec. 21, 1875–6, 603.

Tehama county.—In relation to certain officers (district attorney and clerk), 1871–2, 755.

Relating to salary and duties of assessor, 1871–2, 756.

Making treasurer *ex officio* tax collector, 1873–4, 796; 1875–6, 232.

Trinity county.—Fixing salary of supervisors, 1871–2, 380.

Fixing salary of county clerk, 1873–4, 184.

Compensation of under-sheriff, 1873–4, 593.

Tulare county.—Regulating traveling fees of sheriff, 1873–4, 45.

Separating office of county recorder from that of county clerk, 1873–4, 60.

Fixing salary of county judge, 1873–4, 349.

Separating offices of auditor and recorder, and regulating salaries, 1875–6, 156, 363.

Fixing salary and bond of assessor, 1875–6, 172.

Regulating traveling fees of sheriff, 1877–8, 559.

Tuolumne county.—Making sheriff *ex officio* tax collector, 1869–70, 525.

Regulating salaries of certain officers, 1875–6, 45.

Ventura county.—Act creating county and providing for organization, 1871–2, 484; 1873–4, 365.

Fixing salaries of certain officers, 1873–4, 618.

Yolo county.—Concerning county officers and regulating fees and salaries, 1873–4, 420; amended, 1875–6, 170, 566.

Concerning salaries of certain officers, 1877–8, 637.

Yuba county.—As to superintendent of public schools, 1871–2, 36; 1873–4, 153.

To fix salaries and compensation of certain officers, 1873–4, 109.

Relating to fees and salaries of certain officers, 1875–6, 522.

Concerning fees of justices of the peace, 1877–8, 738.

FENCES.

The laws in relation to lawful fences, as they existed at the time of the adoption of the codes, continue in force except so far as repealed or affected by subsequent legislation: See Pol. Code, sec. 19.

General fence law.—The following is the general fence law; but, as will be seen by reference to section 9, it did not apply to certain counties named. That left in force for such counties the previous act of March 30, 1850. Subsequent legislation has made various changes; and the law now in force is the general act, except as to the counties of Amador, Butte, Colusa, Contra Costa, Klamath, Modoc, Placer, San Bernardino, San Diego, Santa Barbara, Shasta, Siskiyou, Tehama, Trinity, Tuolumne, and Yuba, which have special acts. There are also some modifying special and local acts noted further along. The general law is as follows:

An Act concerning lawful fences.

[Approved April 27, 1855, 154.]

Lawful fences.

SECTION 1. Lawful fences are described as follows, viz.:

Wire fence.

1. Wire fence shall be made of post, not less than twelve inches in circumference, set in the ground not less than eighteen inches, and not more than eight feet apart, with not less than three horizontal wires, each one fourth of an inch in diameter—the first one shall be eighteen inches from the ground, the other two above this one, at intervals of one foot between each, all well stretched and securely fastened from one post to another, with one rail, slat, pole, or plank, of suitable size and strength, securely fastened to the post not less than four and a half feet from the ground.

Post and rail fence.

2. Post and rail fence shall be made of posts of the same size and at the same distance apart, and the same depth in the ground as above, with three rails, slats, or planks, of suitable size and strength, the top one to be four feet and a half from the ground, the other two at equal distances between the first and the ground, all securely fastened to the post.

Picket fence.

3. Picket fence shall be the same height as above, made of pickets, each not less than six inches in circumference, not more than six inches apart, driven in the ground not less than ten inches, all well secured at the top by slats or caps.

Ditch and pole fence.

4. Ditch and pole fence shall be made of a ditch not less than four feet wide on top, and three feet deep, embankment thrown upon the inside of the ditch, with substantial posts set in the embankment not more than eight feet apart, and a plank, pole, rail, or slat securely fastened to said posts, at least five feet high from the bottom of the ditch.

Pole fence—Hedge fence.

5. Pole fence shall be four and a half feet high, with stakes not less than three inches in diameter, set in the ground not less than eighteen inches, and

where the stakes are placed seven feet apart, there shall be not less than six horizontal poles well secured to the stakes; if the stakes are six feet apart, five poles; if three or four feet, four poles; if two feet apart, three poles, and the stakes need not be less than two inches in diameter; if one foot apart, one pole, and stakes need not be more than two inches in diameter. The above is a lawful fence so long as the stakes and poles are securely fastened and in a fair state of preservation. Hedge fence shall be considered lawful when, by reliable evidence, it shall be proved equal in strength, and as well suited to the protection of inclosed lands, as any one of the fences described in other subdivisions of this section.

Brush fence.

6. Brush fence shall be four and a half feet high, and at least twelve inches wide, with stakes not less than two inches in diameter, set in the ground not less than eighteen inches, one on each side, every third foot tied together at the top, with one horizontal pole tied to the outside stake five feet from the ground.

Other fences as strong.

SEC. 2. Any fence which, by reliable evidence, shall be declared as strong, substantial, and as well suited to the protection of inclosures as either of the above described, shall be a lawful fence in all the counties of this state, except Sonoma, Napa, El Dorado, Yuba, and Marin. [*Amendment, approved May* 13, 1861, 513.]

Made applicable to Marin by act of April 9, 1858, 123.

Lawful fences in certain counties.

SEC. 3. In each of the counties named in the preceding section of this act, the following described shall be a lawful fence, viz.:

Post and rail.

1. Post and rail fence shall be made of posts not less than four by six inches, set in the ground not less than two feet, with rails not less than three inches thick, placed not more than five inches apart, for the first three feet, and after that not more than eight inches apart, the fence to be not less than five five feet high.

Worm.

2. Worm fence shall be five feet high, with additional stakes and riders, no greater space to intervene between the rails than in a post and rail fence.

Post and slat.

3. Post and slat fence shall be of the same height and with the same space between the slats as above in this section; the post shall not be less than twelve inches in circumference, and not less than two feet in the ground, the slats to be not less than one and one half inches thick, all well fastened to the post with twelve-penny nails.

Paling.

4. Paling fence shall be of the same height, and the post of the same size, and set in the ground the same depth, as in a post and rail fence, with posts not more than ten feet apart.

Ditch.

5. Ditch fence shall be four feet wide at the top, and three feet deep, with post set in the embankment not over seven feet apart, with three slats not less than four inches wide and one and a half inches thick, all securely fastened to the post. Or—

Other lawful fences.

SEC. 4. Any fence which, by reliable evidence, shall be declared as strong, substantial, and as well calculated to protect inclosures as either of those described in the third section of this act, shall be a lawful fence in each of the counties named in the second section of this act.

Using another's fence for inclosure.

SEC. 5. When a fence has been erected by any person on the line of his land, and the person owning the land adjoining thereto shall make, or cause to be made, an inclosure on the opposite side of such fence, so that such fence may answer the purpose of inclosing his ground also, such person shall pay the owner of such fence already erected one half the value of so much thereof as serves as a partition fence between them; provided, if the party so inclosing shall neglect or refuse to pay for the one half of such fence, the land so inclosed shall become liable therefor, and the value of the one half of such fence shall become and remain a lien upon such land, and shall draw interest at the rate of fifteen per cent per annum until paid. Notice of such lien shall be filed in the office of the county recorder of the county, as provided by law for mechanics' liens. The value of the fence at the time such inclosure was made shall be the amount, with interest thereon, to which the builder of the fence shall be entitled. [*Amendment, approved April* 3, 1860, 141.]

Partition fence.

SEC. 6. When two or more persons own land adjoining, which is inclosed by one fence, and it becomes necessary for the protection of the rights and interests of one party that a partition fence should be made between them, the other or others, when notified of such fact, shall proceed to erect, or cause to be erected, one half of such partition fence; said fence to be erected on, or as near as practicable, the line of said land; and if, after six months' notice given, either party shall persist in refusing to erect, or cause to be erected, one half of such fence, the party giving the notice may proceed to erect, or cause to be erected, the entire partition fence, and collect by law one half of the cost of such fence from the other party, and he shall be entitled to the lien upon the land thus partitioned, as provided in the preceding section. [*Amendment, approved April* 3, 1860, 141.]

Fences on the line.

SEC. 7. All partition fences separating adjoining inclosures shall stand upon the line, and any person or persons, when erecting a partition fence, and refusing to place it on the line dividing such lands, or to remove it to such line when erected otherwise than thereon, shall subject himself to one half the cost of its removal and erection in the right place.

Repair of partition fences.

SEC. 8. The respective owners or lessees of lands which now are or hereafter may be inclosed with fences, shall keep up and maintain in good repair all partition fences between their own and the next adjoining inclosures, in equal shares, so long as both parties continue to occupy or improve the same.

Counties exempt.

SEC. 9. Nothing in this act shall be so construed as to apply to the counties of Butte, Amador, Tuolumne, San Diego, Nevada, San Bernardino, Colusa, Placer, Santa Barbara, Yuba, Trinity, Shasta, Klamath, and Siskiyou; and said counties are hereby excepted and excluded from the provisions of this act. [*Amendment, approved April* 4, 1864; 1863–4, 465.]

Made applicable to Nevada by act of April 1, 1864; 1863–4, 318.

SEC. 10. An act entitled "An act concerning lawful fences," etc., passed March thirtieth, eighteen hundred and fifty, is hereby repealed, except as far as the counties exempt from the provisions of this act are concerned.

An Act amendatory of and supplementary to an act entitled "An act concerning lawful fences."

[Approved April 3, 1860, 141.]

Sections 1 and 2 contain the amendments to sections 5 and 6 inserted in the foregoing act of April 27, 1855.

Parties to maintain partition fences.

SEC. 3. Except when otherwise agreed, partition fences dividing lands occupied on both sides shall be maintained throughout the year, each party keeping in repair the portion constructed by, adjudged to, or paid for by him. If either party fails so to do, the other may give him three days' notice that he will call upon three disinterested householders, at a specified hour on the day fixed, to examine such fence, and if they deem it insufficient, to assess the amount necessary to make it sufficient.

Failure to repair.

SEC. 4. If, within fifteen days thereafter, the party to whom notice has been given shall fail to repair such fence, the complainant may do so; and in that case he shall have cause of action against the other for the amount so assessed, with twenty-five per cent damages thereon.

SEC. 5. Upon such trial, the defendant may impeach the assessment, and in that case, the court or jury, as the case may be, shall determine the amount of damages.

Division Fences.

An Act to provide for constructing division fences.

[Approved March 9, 1876; 1875-6, 175.]

Erection of partition fences.

SECTION 1. When two or more persons own land adjoining, which is inclosed by one fence, in either the counties of Sacramento, Solano, Sutter, Yuba, Butte, Contra Costa, and in that portion of San Joaquin county lying and being north and east of the San Joaquin river, Amador, San Luis Obispo, Santa Barbara, Ventura, Tulare, El Dorado, Tuolumne, San Mateo, and Nevada, and it becomes necessary for the protection of the rights and interests of one party that a partition fence should be made between them, the other or others, when notified, shall proceed to erect, or cause to be erected, one half of such partition fence; said fence to be erected on, or as near as practicable, the line of said land. And if, after notice given in writing, or after determination of the viewers, as provided in section six hereof, either party shall fail to proceed to erect, or cause to be erected and completed, within six months' time thereafter, one half of such fence, the party giving the notice may proceed to erect, or cause to be erected, the entire partition fence, and collect by law one half of the costs of such fence from the other party, and he shall be entitled to a lien upon the land thus partitioned, as provided in section one of an act entitled "An act amendatory of and supplemental to an act entitled 'An act concerning lawful fences,' approved April third, eighteen hundred and sixty."

Lawful division fences.

SEC. 2. Lawful division fences are described as follows:

1. If made of stone, four feet high, three feet base, and one foot thick on the top.

2. If it be worm fence, the rails should be well laid, and at least five feet high.

3. If made of posts and boards, the posts must be set well in the ground, not less than eighteen inches, and not wider apart than eight feet. If intended to turn all stock, it shall be at least five six-inch boards or four eight-inch boards high or four boards high with a ditch embankment equal to one board or four six-inch boards high with a wire on top; the boards to be six inches wide and one inch thick, the top board or wire to be four and one half feet from the ground, the spaces well divided, and the boards securely nailed to the posts. If intended, as by mutual agreement in writing, a lawful fence to turn only neat cattle, horses, and mules, a three-board fence shall be deemed sufficient, the bottom board to be two feet from the ground.

4. If made of pickets, posts and rails, or posts and poles, and a ditch or ditches, the fence must be equally strong and secure as a fence made as described in the last subdivision.

5. If made of wire, posts and poles, ditch, pickets, hedge, brush, or any other materials, the fence, to be lawful, must be equal in strength and capacity to turn stock as the fence described in the third subdivision of this section. [*Amendment, approved March* 30, 1878; 1877–8, 765; *took effect from passage.*]

Dimensions of posts.

SEC. 3. All posts used in such fences shall be at least twelve inches in circumference, set at least eighteen inches in the ground, and must be replaced when and as often as the fence shall become decayed.

Duty of owners.

SEC. 4. Each coterminous land-owner shall construct and keep in repair a just proportion of the line fence between their respective tracts of land, unless the owner of one or both of said tracts shall choose to allow his land to lie uninclosed.

Liability of adjoining owners.

SEC. 5. When one of such adjoining proprietors shall have allowed his land to lie uninclosed, and afterwards shall inclose it, he shall owe and be indebted to such adjoining owner one half the value of any division fence owned by the other, used by him in forming such inclosure; and each shall thereafter keep one half of such fence in repair.

Disagreement, viewers to decide.

SEC. 6. If adjoining proprietors cannot agree as to the proportion or the particular part of a division fence to be made, maintained, or kept in repair by each respectively, either party may apply, on five day's notice, to a justice of the peace of the township, if there be one, if not, to the county judge, for the appointment of three viewers, who may examine witnesses on oath, and view the premises, and must determine:

1. If the fence is owned by one proprietor, how much the other shall pay as his proportion of the value;

2. If the fence, or the whole thereof, is not built, which part thereof shall afterwards be built and kept in repair by each. The determination of the viewers shall be reduced to writing and signed by them, and shall be filed in the office of the county clerk, and such determination shall be conclusive upon the parties. If any part of such determination shall consist in fixing the value of a fence, for which one party is to pay the other a proportion also fixed, such proportion shall be paid within thirty days after notice of such determination,

and if not so paid may be recovered by action in any court of competent jurisdiction. The viewers shall be entitled to a fee of three dollars each, one half to be paid by each proprietor.

SEC. 7. Nothing in this act shall be held to repeal or affect subdivision fourteen of section eight hundred and one of the Civil Code, nor sections eight hundred and forty and eight hundred and forty-one of said code, but this act shall be deemed cumulative.

SEC. 8. This act shall be in force from and after its passage.

The above act was repealed so far as it related to San Mateo county: Stats. 1877–8, 1019. See Stats. 1875–6, 173, for statute applicable to that county.

Fences in Amador, San Diego, Santa Barbara, Trinity, Klamath, and Siskiyou counties.—The following is the law which was in general force previous to the act of April 27, 1855, and is still in force as to the counties named above.

An Act concerning lawful fences, and animals trespassing on premises lawfully inclosed.

[Passed March 30, 1850, 131.]

Lawful fence defined.

SECTION 1. Every inclosure shall be deemed a lawful fence which is four and a half feet high, if made of stone; and if made of rails, five and a half feet high; if made upon the embankment of a ditch three feet high from the bottom of the ditch, the fence shall be two feet high; said fence to be substantial and reasonably strong, and made so close that stock cannot get their heads through it, and if made to turn small stock, sufficiently tight to keep such stock out. A hedge fence shall be considered a lawful fence if five feet high and sufficiently close to turn stock.

Trespasses by animals on grounds inclosed by a lawful fence.

SEC. 2. If any horses, mules, jacks, jennies, hogs, sheep, goats, or any head of neat cattle, shall break into any grounds inclosed by a lawful fence, the owner or manager of such animals shall be liable to the owner of said inclosed premises for all damages sustained by such trespass; and if the trespass is repeated by neglect of the owner of such stock, he shall, for the second offense, be subject to double the damages sustained by the owners of said premises.

Penalty for injuring animals entering on lands not lawfully inclosed.

SEC. 3. If any owner or occupier of any grounds or crops injured by any animal or animals breaking into or entering on grounds not inclosed by a lawful fence shall kill, maim, or materially hurt or injure any animal doing such injury, he shall be liable to the owner for all damages, and also all costs that may accrue in a suit for such damages.

Fences in San Bernardino, Colusa, Shasta, Tehama, and Placer counties.—The following is the law in the above-named counties:

An Act concerning lawful fences in the counties of San Bernardino, Colusa, Shasta, Tehama, and Placer.

[Approved April 18, 1859, 279.]

Lawful fences.

SECTION 1. In the counties of San Bernardino, Colusa, Shasta, Tehama, and Placer, every inclosure shall be deemed a lawful fence which is four and one half feet high, if made of stone; and if it be made of rails, five and one half feet high; if the fence be a post and rail fence, or a picket fence, it shall be constructed of posts of reasonable size and strength, firmly set in the ground, not more than twelve feet apart—and not more than eight feet apart if it be a board fence; the nails, boards, or pickets to be of reasonable size and strength, securely fastened to the posts, to the height of four and a half feet, and reason-

ably close; if a picket fence, the pickets, also, to be strongly nailed to a rail above, and one below, or driven into the ground and nailed to a rail above, reasonably close; if a ditch fence, the ditch to be at least two and a half feet deep, and three feet wide at the top, the embankment to be either on the inside or outside the inclosure, with a rail, board, or picket fence on the embankment, to the height of three feet, or any other kind of fence equivalent in height, quantity and strength, to the above kind of fences, are hereby declared lawful fences in said counties.

Damages.

SEC. 2. If any horse, mule, jack, jenny, hog, sheep, goat, or any head of neat cattle, should break into any ground inclosed by a lawful fence, the owner or manager of such animal shall be liable to the owner of such inclosed premises for all damages sustained by such trespass; and if the trespass be repeated, by neglect of the owner or manager of such animals, he shall, for the second and every subsequent offense or trespass, be subject to double the damages of such trespass, to the owner of said premises; provided, also, that the owner of any premises, inclosed by a lawful fence, may take up, and safely keep, at the expense of the owner thereof, any such animal, or animals, trespassing thereon, and if such animal, or animals, shall not be applied for, by the owner thereof, and such damages be paid, within ten days after such taking up, the same may be posted and disposed of, under the estray law of the state; and, before restitution shall be had by the owner of such animal, or animals, in any case, all damages done by them, and all expenses of pasturing, keeping, and disposing of them, shall be paid.

Partition fences.

SEC. 3. When a fence shall have been erected by any person, on the line of his land, or that for which he may have a lease for one year, or more, and the person owning the land adjoining thereto, or holding a lease of the same for one or more years, shall make, or cause to be made, an inclosure on the opposite side of such fence, so that such fence may answer the purpose of inclosing his ground also, such person shall pay the owner of such fence, already erected, one half of the value of so much thereof as serves as a partition fence between them.

May collect cost.

SEC. 4. When two or more persons own land adjoining, which is inclosed by one fence, and it becomes necessary, for the protection of the right and interest of one party, that a partition fence should be made between them, the other, or others, when notified of the fact, shall proceed to erect, or cause to be erected, one half of such partition fence, such fence to be erected on (or as near as possible) the division line of such land; and if, after notice is given by either party, and a reasonable time has elapsed, and the other party persist in refusing to erect one half of such fence, the party giving such notice may proceed to erect the entire partition fence, and collect, by law, the proportional share of the cost of such fence, from the party, or parties, so refusing to build his or their respective portions thereof.

On the line.

SEC. 5. All partition fences, separating adjoining inclosures, shall stand upon the line, and any person, or persons, when erecting a partition fence, and refusing to place it on the line dividing such lands, or remove it to such line,

when erected otherwise than thereon, shall subject himself to one half the cost of the removal, and erection thereof in the right place.

In repair.

SEC. 6. The respective owners, or lessees, of lands which now are, or hereafter may be, inclosed with fences, and their successors in interest therein, shall keep up and maintain, in good repair and condition, all partition fences, between their own and the next adjoining inclosures, in equal shares.

Under one inclosure.

SEC. 7. When two or more persons shall agree to cultivate lands under one inclosure, neither of them shall place, or cause to be placed, any stock or animals on his, her, or their ground, to the injury or damage of the other, or others, but, for a violation of this provision, shall be liable for all damages thus sustained by the other, or others, and for a repetition of such violation, after due notice be given, and for every subsequent repetition, double damages shall be recovered; it shall not be necessary to prove an express agreement to cultivate under one inclosure, but the fact of such cultivation shall be sufficient evidence of such agreement.

Repealing clause.

SEC. 8. All acts or parts of acts, inconsistent with the provisions of this act, are hereby repealed, so far as they relate to the counties of San Bernardino, Colusa, Shasta, Tehama, and Placer.

The foregoing act was modified, so far as partition fences in Colusa and Tehama counties are concerned, by an act concerning partition fences in the counties of Colusa and Tehama, approved March 11, 1876; 1875–6, 207. This and the other acts referred to below are merely referred to, without being given in full, on account of their number and length, and because of their limited application.

Contra Costa county.—An act concerning lawful fences in the county of Contra Costa, passed March 5, 1858, 40; supplemented May 3, 1861, 277. See also "General Laws," secs. 3047 et seq.

Tuolumne county.—An act concerning fences in Tuolumne county, approved April 4, 1864; 1863–4, 475. See also "General Laws," 3058.

Butte and Yuba counties.—An act defining a lawful and partition fence in the counties of Butte and Yuba, approved March 30, 1872; 1871–2, 700.

Modoc county.—An act concerning lawful and partition fences in Modoc county, approved March 13, 1874; 1873–4, 362; amended February 25, 1876; 1875–6, 71.

San Mateo county.—An act in relation to boundary fences, and the trespass of animals, in the county of San Mateo, approved March 9, 1876; 1875–6, 173.

Sonoma county.—An act in relation to division fences in the county of Sonoma, and the lines of counties bordering thereon, approved March 29, 1878; 1877–8, 692.

An Act regulating the height of division fences and partition walls in cities and towns.

[Approved March 9, 1885; 1885, 45.]

SECTION 1. It shall be unlawful for any owner of real property in any city or town in this state, or any person having possession thereof, to construct, erect, build, permit, or maintain upon such premises, any fence or partition wall which shall exceed ten feet in height, without first obtaining a permit to do so from the board of supervisors or city council of the city or town in which said fence or wall is to be erected and maintained.

SEC. 2. No permit to construct or maintain any fence or division partition wall having a greater height than ten feet shall be granted by the board of supervisors or city council of any city or town in this state, unless the person applying therefor, and to whom such permit is granted, shall first obtain and present to such board of supervisors or city council the written consent of the person or persons having ownership and possession of the adjoining premises affected thereby; provided, that where such fence or wall is constructed around

a public garden, or place of public resort where an admission fee is charged, no signature or consent of adjacent owners shall be required.

SEC. 3. Any violation of section one of this act shall be deemed a misdemeanor, and the person so offending shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than sixty days nor more than one year, or by both fine and imprisonment.

FISH.

The general law in relation to the taking of trout and salmon, and the use of poisons or explosive substances for taking fish, is contained in the Penal Code, secs. 632 et seq. But several of the special and local acts in relation to fish in particular streams or counties have been expressly continued in force by section 19 of the Political Code, and so far as these acts are concerned, and such others as have been passed since the taking effect of the codes, the general law is modified. It is deemed proper to append a list of such special and local acts as are thus in force. They are as follows:

An act to prevent the destruction of fish in Bolinas bay, Marin county, approved March 31, 1866; 1865–6, 637.

An act concerning trout in Siskiyou county, approved April 2, 1866; 1865–6, 857.

An act to prevent the destruction of fish in Napa river and Sonoma creek, approved January 29, 1868; 1867–8, 13; amended March 20, 1871; 1871–2, 441.

An act to prevent the destruction of fish and game in and upon and around the waters of lake Merritt or Peralta, in the county of Alameda, approved March 18, 1870; 1869–90, 325.

An act to regulate salmon fisheries in Eel river, in Humboldt county, approved April 18, 1859, 298.

An act for the protection of fish in the waters of Butte creek, in the county of Butte, approved February 21, 1872; 1871–2, 138; amended February 9, 1874; 1873–4, 87.

An act for the preservation of fish in the waters of Siskiyou county, approved March 16, 1872; 1871–2, 385.

An act for the protection of fish and game in certain portions of Napa county, approved March 26, 1872; 1871–2, 550.

An act to protect fish in the counties of Plumas and Sierra, approved February 24, 1874; 1873–4, 154; repealed April 1, 1876; 1875–6, 725.

An act to prevent the catching of fish by seines, nets, or wears, in the San Antonio creek, in the county of Alameda, approved March 20, 1876; 1875–6, 362.

An act to prohibit the destruction of fish in Alameda county (lake Chabot and San Leandro creek), approved March 28, 1878; 1877–8, 598: See Pen. Code, sec. 637.

An act to prevent the destruction of fish in Kings river, approved March 28, 1878; 1877–8, 601: See Pen. Code, sec. 637.

An act for the preservation of fish in the waters of lake Bigler, approved March 30, 1878; 1877–8, 746: See Pen. Code, sec. 637.

An act to provide for removing obstructions in Pitt river, above the mouth of Hat creek, so as to enable salmon to reach the spawning-grounds on the upper waters of said river and its tributaries, approved April 18, 1880; 1880, 104 (Ban ed. 343): See Pol. Code, sec. 643.

An act for the protection of certain kinds of fish (cat fish), approved April 16, 1880; 1880, 106 (Ban. ed. 345): See Pen. Code, sec. 637.

An act to provide for the construction, maintenance, and regulation of fishways in streams naturally frequented by salmon, shad, and other migratory fish, approved April 16, 1880; 1880, 121 (Ban. ed. 387): See Pol. Code, sec. 643.

An act relating to fishing in the waters of this state, approved April 23, 1880; 1880, 123 (Ban. ed. 388): See Pen. Code, sec. 637.

FORESTRY.

See AGRICULTURE; FRUIT-TREES AND VINES; HORTICULTURE; VITICULTURE; SILK CULTURE.

An Act to create a state board of forestry, and to provide for the expenses thereof.

[Approved March 3, 1885; 1885, 10.]

SECTION 1. There shall be established a state board of forestry, consisting of three persons appointed by the governor of the state.

SEC. 2. Each member shall hold office for the term of four years, and until his successor shall be qualified.

SEC. 3. The board may appoint and prescribe the duties of its secretary, and elect one of its own members treasurer, both to hold office at the pleasure of the board.

SEC. 4. The duty of the board shall be to collect statistics and other information with regard to forestry, tree culture, and tree preservation throughout the state; to correspond with various forestry societies and individuals, for the

purpose of obtaining such information; to learn by investigation and experiments the adaptability of various trees to the different sections of the state; to disseminate such information throughout the state in such a manner as to aid and encourage the purpose for which this board is formed; to assist in enforcing and carrying out all national and state forestry laws, as far as practicable; to act with a special view to the continuance of water sources that may be affected in any measure by the destruction of forests near such sources; to do any and all things within their power to encourage the preservation and planting of forests, and the consequent maintenance of the water sources of the state.

SEC. 5. This board shall report biennially to the governor a detailed statement of its work, which shall include all disbursements that may have been made. All printing required to be done by the board for their official use shall be done by the superintendent of state printing.

SEC. 6. There is hereby appropriated for the use of this board, out of any moneys in the state treasury not otherwise appropriated, the sum of five thousand ($5,000) dollars for the two years beginning the first of April, eighteen hundred and eighty-five; said sum to be used for the payment of the salary of the secretary, not to exceed the sum of one hundred and twenty-five dollars per month, the necessary traveling expenses of the members of this board, the employment of assistants, and such other needful expenditures as this board may incur, and the state controller will draw his warrants on the state treasurer in favor of the treasurer of the board for the same.

SEC. 7. The members of this board shall receive no compensation.

SEC. 8. All acts or parts of acts in conflict with this act are hereby repealed.

FRESNO COUNTY.

References to special and local acts.—Boundaries, 1856, 183; 1861, 235; 1869–70, 449.

Seat of justice, 1856, 183.

Providing for organization, etc., 1856, 183.

Authorizing board of supervisors to levy and cause to be collected special tax for liquidating outstanding and accruing indebtedness, 1857, 13'

Fixing amount of official bonds of county officers, 1858, 119.

Authorizing treasurer to transfer certain funds, 1861, 2.

Defining time of holding court of sessions, 1861, 123.

Creating Mono county, 1861, 235.

Granting right to construct bridge and establish ferry on San Joaquin river to J. B. Marshall and associates, 1863, 180.

Concerning roads and highways, 1863, 542.

Fixing compensation of board of supervisors, 1863–4, 124.

Providing for construction of wagon-road between Millerton and Owensville, 1863–4, 222.

Fixing compensation of district attorney, 1863–4, 227.

Auditor to issue bonds for erection of jail, 1865–6, 148; 1867–8, 9.

Protection of stock-raisers, 1865–6, 322.

Official publications, 1865–6, 453.

To improve navigation of San Joaquin river, 1865–6, 536.

Franchise for road from Converse ferry, 1865–6, 632.

Act concerning rodeos, etc., 1865–6, 673.

To create board of water-commissioners, 1865–6, 777.

To aid in construction of wagon road, 1865–6, 785.

Franchise to J. H. Wood and associates for a turnpike road, 1865–6, 806.

To aid in construction of S. P. R. R., 1865–6, 816.

To provide payment for indebtedness, 1867–8, 92.

To stay collection of taxes, 1867–8, 169.

For relief of sheriff, 1867–8, 239.

Fees and salaries, 1867–8, 448; 1869–70, 148.

To be in thirteenth judicial district, 1867–8, 658.

Act in relation to herding sheep, 1869–70, 304.

Salary of auditor, state's portion to be paid, 1869–70, 408.

Bounty tax for the destruction of squirrels, 1869–70, 316.

For the relief of ex-sheriff Ashman, 1869–70, 518.

For the relief of J. N. Walker, sheriff, 1869–70, 722.

Terms of district court, 1869–70, 792.

For improvement of Kings river, 1871–2, 422; 1875–6, 499.

For relief of J. N. Walker, former tax-collector, 1871–2, 513.

Salary of district attorney, 1871–2, 654.

Concerning roads and highways, 1871–2, 704.

In fourth congressional district, 1871–2, 714.

To define boundary-line between Fresno and Mariposa counties, 1871–2, 891; 1873–4, 100.

Irrigation act not to apply to, 1871–2, 948.

For appointment of notaries public, 1873–4, 20.

To protect agriculture, 1873–4, 50, 179.
To apply parts of the codes to, 1873–4, 178.
To fix salary of treasurer, 1873–4, 236.
Collection of unpaid taxes, 1873–4, 269.
To repeal special road laws, 1873–4, 352.
To protect big trees, 1873–4, 347.
To fix salary of county judge, 1873–4, 349.
In fourth senatorial district, 1873–4, 366.
Issue of bonds for erection of county buildings, 1873–4, 349.
To establish boundary between Fresno and Tulare, 1873–4, 700.
In relation to rodeos, 1873–4, 793.
To locate county seat, 1873–4, 913.
Fixing bonds of tax collector, 1875–6, 16.
To prevent certain animals and fowls running at large in Fresno town, 1875–6, 57.
To extend time for swamp-land district No. 125 to complete work of reclamation, 1875–6, 82.
To abate squirrel nuisance, 1875–6, 143.
Separating offices of auditor and recorder and regulating salaries, 1875–6, 151, 363.
To apply a certain act as to transfer of funds, 1875–6, 249.
For distribution of school money, 1875–6, 332.
To protect agriculture and prevent trespassing of animals, 1875–6, 373.
To establish county line between Fresno and Tulare counties, 1875–6, 397.
Concerning water ditches and water privileges for irrigating, mining, and manufacturing purposes, 1875–6, 547.
To create West Side irrigation district, 1875–6, 731, 885.
Extending time for publishing delinquent tax list, 1877–8, 64.
As to office of county clerk, 1877–8, 104.
For improvement of court-house and hospital grounds, 1877–8, 174.
Providing for building a school-house in Fresno city school district, 1877–8, 205.
To protect town of Fresno against fire, 1877–8, 214.
Fixing salary of treasurer, 1877–8, 255.
To determine rights of parties in certain swamp and overflowed lands, 1877–8, 358.
To promote sanitary condition of towns and villages, 1877–8, 383.
For issue of bonds and building certain roads and bridges, 1877–8, 395.
For relief of bondsmen of W. W. Hill, late treasurer, 1877–8, 451.
Creating West Side irrigation district, 1877–8, 468.
To prevent destruction of fish in Kings river, 1877–8, 601.
To provide a new great register, 1877–8, 693.
Relating to distribution of school moneys, 1877–8, 782.
Providing for roads and highways, 1877–8, 859.
Amending act for improvement of Kings river, and erecting booms therein, 1877–8, 961.
To attach a portion of Kings River school district to Kingsbury school district, 1877–8, 1010.

FRUIT-TREES AND VINES.

See Agriculture; Forestry; Horticulture; Viticulture; Silk Culture.

An Act for the better protection of fruit-trees and vines.

[Approved April 9, 1880; 1880, 36 (Ban. ed. 187).]

Commissions and their powers.

Section 1. The board of supervisors in the several counties of this state are hereby authorized, when application is made in writing by five legal voters of any voting precinct in the county, to appoint a commission of such number as they shall deem necessary, to inspect fruit-trees and vines within the district for which they shall have been appointed; and in case disease of any kind be found among said trees or vines, which is extending and likely to extend to neighboring vineyards or orchards, said commission may order such action taken by the removal of such trees and vines, or otherwise, as they may deem necessary for the public good; provided, such commission shall serve without compensation, and the labor necessary to comply with their recommendations shall be at the expense of the owner of the property.

Sec. 2. This act shall take effect immediately.

An Act to protect and promote the horticultural interests of the state.

[Approved March 14, 1881; 1881, 86.]

Board of horticultural commissioners.

Section 1. Whenever a petition is presented to the board of supervisors of any county, and signed by five or more persons who are resident freeholders and possessors of an orchard, or both, stating that certain or all orchards, or nurseries, or trees of any variety, are infected with scale bug, codling moth, or other insects that are destructive to trees, and praying that a commission be

appointed by them, whose duty it shall be to supervise their destruction, as hereinafter provided, the board of supervisors shall, within twenty days thereafter, select three commissioners for the county, to be known as a county board of horticultural commissioners. The board of supervisors may fill any vacancy that may occur in said commission by death, resignation, or otherwise, and appoint one commissioner each year, one month or thereabouts previous to the expiration of the term of office of any member of said commission. The said commissioners shall serve for a period of three years from the date of their appointment, except the commissioners first appointed, one of whom shall serve for one year, one of whom shall serve for two years, and one of whom shall serve for three years, from the date of appointment. The commissioners first appointed shall themselves decide, by lot or otherwise, who shall serve for one year, who two years, and who three years, and shall notify the board of supervisors of the result of their choice.

Duty of board.

SEC. 2. It shall be the duty of the county board of horticultural commissioners in each county, whenever they shall be informed by complaint of any person residing in such county, that an orchard, or nursery, or trees, or any fruit-packing house, store-room, sale-room, or any other place in their jurisdiction, is infested with scale bug, codling moth, red spider, or other noxious insects (liable to spread contagion dangerous to the trees or fruit of complainant), or their eggs or larvæ, injurious to fruit or fruit-trees, they shall cause an inspection to be made of the said premises, and if found infected, they shall notify the owner or owners, or the person or persons in charge or possession of the said trees, or places, as aforesaid, that the same are infected with said insects, or any of them, or their eggs or larvæ, and shall require such person or persons to disinfect the same within a certain time, to be specified. If, within such specified time, such disinfection has not been accomplished, the said person or persons shall be required to make application of such treatment for the purpose of destroying them as said commissioners shall prescribe. Said notices may be served upon the person or persons owning or having charge or possession of such infested trees, or places, or articles as aforesaid, by any commissioner, or by any person deputed by the said commissioners for that purpose, or they may be served in the same manner as a summons in a civil action. If the owner or owners, or the person or persons, in charge or possession of any orchard, or nursery, or trees, or places, or articles, infested with said insects, or any of them, or their larvæ or eggs, after having been notified as above to make application of treatment as directed, shall fail, neglect, or refuse so to do, he or they shall be deemed guilty of maintaining a public nuisance, and any such orchards, nurseries, trees, or places, or articles thus infested shall be adjudged, and the same is hereby declared, a public nuisance, and may be proceeded against as such. If found guilty, the court shall direct the aforesaid county board of horticultural commissioners to abate the nuisance. The expenses thus incurred shall be a lien upon the real property of the defendant.

To appoint local inspectors.

SEC. 3. Said county board of horticultural commissioners shall have power to divide the county into districts, and to appoint a local inspector for each of said districts. The duties of such local inspectors shall be prescribed by said county board.

To report to viticultural commissioners.

SEC. 4. It shall be the duty of said county board of commissioners to keep a record of their official doings, and to make a report to the board of state viticultural commissioners on or before the first day of November of each year, who shall incorporate the same in their annual reports.

Duties of.

SEC. 5. It shall be the duty of the commissioners at large, appointed by the board of state viticultural commissioners for such purpose, to recommend, consult, and act with the county board of commissioners in their respective counties as to the most efficacious treatment to be adopted for the extermination of the aforesaid insects, or larvæ, or eggs thereof, and to attend to such other duties as may be necessary to accomplish or carry out the full intent and meaning of this act.

Fees.

SEC. 6. Each county commissioner and local inspector may be paid five dollars for each day actually engaged in the performance of his duties under this act, payable out of the county treasury of his county; provided, that no more shall be paid for such services than shall be determined by resolution of the board of supervisors of the county for services actually and necessarily rendered.

Assistants.

SEC. 7. Each of said commissioners may select one or more persons, without pay, to assist him in the discharge of his duties, as he may deem necessary.

Supervisors to remove.

SEC. 8. If any county board of commissioners, after having received complaint in writing, as provided for in section two of this act, shall fail to perform the duties of their office, as required by this act, they may be removed from office by the board of supervisors, and the vacancy thus formed shall be filled in the same manner as provided for in this act.

Construction.

SEC. 9. Nothing in this act shall be construed so as to affect vineyards or their products.

SEC. 10. This act shall take effect immediately.

An Act to create and establish a state board of horticulture, and appropriate money for the expenses thereof.

[Approved March 13, 1883; 1883, 289.]

Board of horticulture—Districts.

SECTION 1. There shall be a state board of horticulture, consisting of nine members, who shall be appointed by the governor; two from the state at large, and one from each of the seven horticultural districts, which are hereby constituted as follows:

1. The Sonoma district, which shall include the counties of Sonoma, Marin, Lake, Mendocino, Humboldt, Del Norte, Trinity, and Siskiyou.

2. The Napa district, which shall include the counties of Napa, Solano, and Contra Costa.

3. The San Francisco district, which shall include the city and county of San Francisco, and the counties of San Mateo, Alameda, Santa Clara, Santa Cruz, San Benito, and Monterey.

4. The Los Angeles district, which shall include the counties of Los Angeles, Ventura, Santa Barbara, San Luis Obispo, San Bernardino, and San Diego.

5. The Sacramento district, which shall include the counties of Sacramento, Yolo, Sutter, Colusa, Butte, Tehama, and Shasta.

6. The San Joaquin district, which shall include the counties of San Joaquin, Stanislaus, Merced, Fresno, Tulare, and Kern.

7. The El Dorado district, which shall include the counties of El Dorado, Amador, Calaveras, Tuolumne, Mariposa, Placer, Nevada, Yuba, Sierra, Plumas, Lassen, Modoc, Alpine, Mono, and Inyo.

Members.

SEC. 2. The members appointed from each district shall be residents of the district from which they are appointed, and shall be specially qualified by practical experience and study in connection with the industries dependent upon horticulture. They shall each hold office for the term of four years, except that of the nine first appointed, four, to be determined by lot, shall retire at the end of two years, when their successors shall be appointed by the governor.

Secretary and treasurer.

SEC. 3. The board shall appoint and prescribe the duties of a secretary, who shall not be one of their number, and elect of their own number a treasurer, both to hold office during the pleasure of the said board. The treasurer shall give a bond to the state, with sureties approved by the said board, in the sum of ten thousand dollars, for the faithful discharge of his duties.

Powers and duties.

SEC. 4. The board may receive, manage, use, and hold donations and bequests for promoting the objects of its formation. It shall meet semi-annually, and as much oftener, and at such places, as it may deem expedient, to consult and adopt such measures as may best promote the horticultural industries of the state. It may, but without expense to the state, select and appoint competent and qualified persons to lecture in each of the horticultural districts named in section one of this act, for the purpose of illustrating practical horticultural topics, and imparting instruction in the methods of culture, pruning, fertilizing, and also in the best methods of treating the diseases of fruit and fruit-trees, cleansing orchards, and exterminating insect pests. The office of the board shall be kept open to the public, subject to the rules of the board, every day, excepting legal holidays, and shall be in charge of the secretary during the absence of the board.

Disinfection of packages.

SEC. 5. For the purpose of preventing the spread of contagious disease among fruit and fruit-trees, and for the prevention, treatment, cure, and extirpation of fruit pests and the diseases of fruit and fruit-trees, and for the disinfection of grafts, scions, orchard débris, empty fruit boxes, and packages, and other suspected material or transportable articles, dangerous to orchards, fruit, and fruit-trees, said board shall make regulations for the inspection and disinfection thereof, which said regulations shall be circulated in printed form by the board among the fruit growers and and fruit dealers of the state shall be published at least twenty days in two daily newspapers of general circulation in the state not of the same city or county, and shall be posted in three conspicuous places in each county in the state, one of which shall be at the county courthouse thereof. Such regulations when so posted shall be held to impart notice

of their contents to all persons within the state, and shall be binding upon all persons.

Inspector of pests.

SEC. 6. The said board shall elect of their own number, or appoint from without their number, a competent person especially qualified by practical experience in horticulture for the duties of his office, who shall be known as inspector of fruit pests (to hold office at the pleasure of the board), whose duties it shall be to visit the horticultural districts of the state, to see that all regulations of said board and provisions of law to prevent the spread of fruit pests and diseases of trees and plants injurious to the horticultural interests of the state, and all regulations of said board in the nature of quarantining infected or infested districts, and also all rules and regulations of said board concerning disinfection of fruits, trees, plants, grafts, scions, orchard débris, empty fruit boxes, and packages, and other material dangerous to orchards, fruit, and fruit trees are enforced. He shall also, whenever required, and under the direction of the board, and may also upon his own motion, and upon the complaint of interested parties, inspect orchards, nurseries, and other places suspected, or believed to be infested with fruit pests, or infested with contagious disease injurious to trees, plants, or fruits, and he shall report the facts to said board. If upon report of said inspector, or from well-attested facts otherwise before it, said board shall be of the opinion that any locality, orchard, district, or place is infested with fruit pests, or infected with contagious disease injurious to trees, plants, or fruits, and liable to spread to other localities to the injury of other persons or places, said board shall by an order entered upon its minutes, so declare said and such infested or infected district or place shall be under the quarantine regulations of said board. As soon, however, as in the opinion of said inspector the danger from such locality has ceased, he may suspend said quarantine regulations, and shall immediately report the fact to the board, who may approve or disapprove his action. He shall from time to time, and whenever required by said board, report to it such information as he may acquire from observation, experience, and otherwise, as to the best modes of diminishing and eradicating fruit pests and diseases from orchards; and also suggestions in practical horticulture; the adaptation of products to soil, climate, and markets, and such other facts and information as shall be calculated to improve the horticultural interests of the state.

Quarantine guardians.

SEC. 7. The said board, and, in case of necessity, during the recess of the board, the said inspector, may appoint such quarantine guardians as may be needed to carry out the provisions of this act, whose duties it shall be to see that the regulations of the board and the instructions of the inspector are enforced and carried out; they shall also report to said inspector or to the state board, all infractions or violations of said directions, regulations, and of the law in regard to quarantine and disinfection and destruction of pests, and precautions against the spreading of pests and diseases. The salary of quarantine guardians shall not exceed two dollars per day, and shall be paid by the owners of orchards and other places and localities under quarantine regulations; and they may maintain an action therefor before any justice of the peace, in any township in which any quarantined locality is wholly or in part situated. But in no case shall they have any claim upon the state for such services.

Duty of secretary.

SEC. 8. It shall be the duty of the secretary to attend all meetings of the board, and to preserve records of its proceedings and correspondence; to collect books, pamphlets, and periodicals, and other documents containing valuable information relating to horticulture, and to preserve the same; to collect statistics and other information showing the actual condition and progress of horticulture in this state and elsewhere; to correspond with agricultural and horticultural societies, colleges, and schools of agriculture and horticulture, and other persons and bodies, as he may be directed by the board, and prepare, as required by the board, reports for publication. He shall also act as assistant to and obey the directions of the inspector of fruit pests in the exercise of the duties of his office, and shall be paid for his services as such secretary and assistant a salary of one hundred and fifty dollars per month, to be paid as other state officers.

As amended in 1885, see *infra*.

Compensation.

SEC. 9. The inspector of fruit pests shall receive as compensation for his services the sum of two hundred dollars per month, to be paid as other state officers, and his actual traveling expenses shall be allowed, not to exceed one thousand dollars per annum. The members of the board and secretary shall receive their actual traveling expenses in attending semi-annual meetings of the board.

Reports.

SEC. 10. The board shall biennially, in the month of January, report to the legislature a statement of its doings, with a copy of the treasurer's accounts for the two years preceding the session thereof, and abstracts of the reports of the inspector of fruit pests and secretary. Said report shall not exceed one hundred printed pages.

Duty of treasurer.

SEC. 11. The treasurer shall receive all moneys belonging to the board, and pay out the same only for bills approved by the chairman of the finance committee, and shall, annually, render a detailed account to the board.

Appropriation.

SEC. 12. There is hereby appropriated, for the uses of the state board of horticulture, as set forth in this act, out of any moneys in the state treasury not otherwise appropriated, the sum of ten thousand dollars for the year commencing April first, one thousand eight hundred and eighty-five, and ten thousand dollars for the year commencing April first, one thousand eight hundred and eighty-six, and the state controller will draw his warrants upon the state treasurer in favor of the treasurer of said board for the said sums, or any part thereof, when they become available, upon proper demand being made for the same by the said board.

SEC. 13. This act shall take effect and be in force from and after its passage, and all acts or parts of acts inconsistent or in conflict with the provisions of this act are hereby repealed.

Sections 8, 9, 11, and 12 of this act were amended to read as above by an act approved February 18, 1885, to take effect immediately.

An Act to prevent the spreading of fruit and fruit-tree pests and diseases, and to provide for their extirpation.

[Approved March 9, 1885; 1885, 40.]

Disinfecting fruit-trees.

SECTION 1. It shall be the duty of every owner, possessor, or occupier of an orchard, nursery, or land where fruit-trees are grown within this state, to dis-

infect all fruit-trees grown on such lands infested with any insect or insects, or the germs thereof, or infested by any contagious disease known to be injurious to fruit or fruit-trees, before the removal of the same from such premises for sale, gift, distribution, or transportation. Fruit boxes which have been used for shipping fruit to any destination are hereby required to be disinfected previous to their being again used for any purpose; all boxes returned to any orchard, store-room, sales-room, or any place used or to be used for storage, shipping, or any other purpose, must be disinfected within three days after their return; and any and all persons failing to comply with the requirements of this section shall be guilty of a misdemeanor. All packages known as free packages must be destroyed or disinfected before being again used.

Destroying infested fruit.

SEC. 2. It shall be the duty of the owner, lessee, or occupier of any orchard within this state, to gather all fruit infested by the insects known as the codling moth, peach moth, red spider, plum weevil, and kindred noxious insects, their larvæ or pupæ, which has fallen from the tree or trees, as often as once a week, and dispose of or destroy the same in such a manner as to effectually destroy all such insects, their larvæ or pupæ. It shall be the duty of the inspector of fruit pests, or the quarantine guardian, to inspect fruit packages and all trees and plants, cuttings, grafts, and scions, known or believed to be infested by any insect or insects, or the germs thereof, or their eggs, larvæ, or pupæ, injurious to the fruit or fruit trees, or infested with any disease liable to spread contagion, imported or brought into this state from any foreign country, or from any of the United States or territories, and if, upon inspection, such fruit or fruit packages are found to be infested or infected, it shall be a misdemeanor to offer the same for sale, gift, distribution, or transportation, unless they shall be first disinfected.

Owner's label on shipped cuttings.

SEC. 3. Every person shipping fruit-trees, scions, cuttings, or plants from any orchard, nursery, or other place where they were grown or produced, shall place upon or securely attach to each box, package, or parcel containing such fruit-trees, scions, cuttings, or plants, a distinct mark or label, showing the name of the owner or shipper and the locality where produced. And any person who shall cause to be shipped, transported, or removed from any locality declared by the state board of horticulture to be infested with fruit-tree or orchard pests, or infected with contagious diseases injurious to trees, plants, or fruits, unless the same shall have been previously disinfected, shall be guilty of a misdemeanor. Disinfection shall be to the satisfaction of the state board of horticulture, or the inspector of fruit pests. When disinfected, the fact shall be stamped upon each box, package, or separate parcel of fruit-trees, scions, cuttings, or plants; and any person who shall cause to be shipped, transported, or removed any such box, parcel, or package from a quarantine district or locality, not bearing such stamp, shall be guilty of a misdemeanor, and may be punished by fine, as provided in section six of this act. Any person who shall falsely cause such stamp to be used, or shall imitate or counterfeit any stamp or device used for such purpose, shall be guilty of a misdemeanor.

Duties of members of state board.

SEC. 4. It shall be the special duty of each member of the state board of horticulture to see that the provisions of this act are carried out within his respective horticultural district, and all offenders duly punished.

Cleansing fruit-trees.

SEC. 5. All fruit-trees infested by any insect or insects, their germs, larvæ, or pupæ, or infected by disease known to be injurious to fruit or fruit-trees, and liable to spread contagion, must be cleaned or disinfected before the first day of April, eighteen hundred and eighty-five, and on or before the first day of April of every succeeding year thereafter. All owners or occupants of lands on which fruit-trees are grown, failing to comply with the provisions of this section, shall be guilty of a misdemeanor, and fined as provided for in section six of this act. All fruit, packages, trees, plants, cuttings, grafts, and scions that shall not be disinfected within twenty-four hours after notice by the inspector of fruit pests, or a duly appointed quarantine guardian, or any member of the board of horticulture, shall be liable to be proceeded against as a public nuisance.

Penalty.

SEC. 6. Any person or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punishable by a fine of not less than twenty-five dollars nor more than one hundred dollars for every offense.

FUNDS.

The Political Code, sec. 19, continued in force all acts for funding the state debt, or any part thereof, and for issuing state bonds and acts amending or supplementing such acts. It is proposed here to arrange and give or refer to these laws under the following three subheads: 1. State bonds; 2. State funding acts; 3. General and specific funds of state.

State bonds.—The laws authorizing civil loans and the issue of state bonds therefor, and the laws authorizing the issue of war bonds, were very carefully collated in Hittell's "General Laws," secs. 3178 et seq. It is deemed unnecessary to do more in this place than refer the inquirer to that work for information as to such bonds, most of which have been paid, funded, or otherwise disposed of. In addition to such bonds, there were other state bonds issued under the "Funding Acts," which constitute the subject of the next subhead. There have also been various state bonds issued under a number of the acts given or referred to under the names of the "Specific Funds of State," in the following third division.

State funding acts.—Previous to the act of April 28, 1857, which is still in force, and given below, the state funding acts were as follows:

An act to fund the debt, passed April 29, 1851, 301.

An act supplementary to the foregoing act, approved May 4, 1852, 17.

An act to fund the indebtedness of the state which has accrued or may accrue from April 29, 1851, to December 31, 1852, inclusive, and to provide for the payment of the three-per-cent bonds, approved May 1, 1852, 13.

An act supplementary to the foregoing act, approved May 17, 1853, 197.

An act in relation to the interest on the funded debt of 1852, approved April 26, 1853, 118.

An act to fund the indebtedness of the state, existing in the form of state controller's warrants, drawn upon the treasurer of state between June 30, 1853, and July 1, 1855, approved March 16, 1855, 48; amended March 31, 1855, 69.

An act to fund the indebtedness of the state now existing in the form of controller's warrants, drawn on the general fund, or that may be outstanding on January 1, 1857, or warrants issued for indebtedness occurring prior to January 1, 1857, approved April 19, 1856, 213.

All the above acts are collated and given in the "General Laws," secs. 3192 to 3253 inclusive. Under all those acts the time fixed for the payment of bonds has expired. Under the next act, which also provided for the refunding of such bonds, the time fixed for the payment of bonds is July 1, 1867.

An Act to provide for paying certain equitable claims against the state of California, and to contract a funded debt for that purpose.

[Approved April 28, 1857, 300.]

Treasurer to prepare bonds.

SECTION 1. For the purpose of liquidating, funding, and paying the claims against the state of California, hereinafter specified, the treasurer of state shall cause to be prepared suitable bonds of the state of California, not to exceed the sum of three millions nine hundred thousand dollars, bearing interest at the rate of seven per cent per annum from the date of their issue, payable at the state treasurer's office on the first day of July, eighteen hundred and seventy-seven. The interest accruing on said bonds shall be due and payable at the

office of the treasurer of state on the first day of January and July of each year; provided, that the first payment of interest shall be made before the first day of January, eighteen hundred and fifty-nine. Said bonds shall be signed by the governor and countersigned by the controller, and indorsed by the treasurer of state, and shall have the seal of the state affixed thereto.

Coupons.

SEC. 2. Coupons for the interest shall be attached to each bond so that they may be removed without injury or mutilation to the bond. Said coupons, consecutively numbered, shall be signed by the treasurer of state.

Records of bonds.

SEC. 3. It shall be the duty of the treasurer and controller of state, each to keep a separate record of all such bonds as may be issued, showing the number, date, and amount of each bond, and to whom the same was issued, and upon what claim, and its amount; and none of the claims herein specified shall be liquidated or paid but in the manner herein provided.

Expense of preparing bonds.

SEC. 4. The sum of one thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated to pay the expenses that may be incurred by the treasurer in having said bonds prepared, but the controller shall not draw his warrant on the treasury for this amount until there is money therein to pay the same.

Claims exchanged for bonds.

SEC. 5. All persons having any of the claims against the state of California, entitled to be funded as hereinafter specified, shall, upon the presentation of the same to the treasurer of state, receive in exchange therefor a bond or bonds of the state of California, provided for in the first section of this act; but no bond shall be issued for a less sum than five hundred dollars, nor for fractional parts of a hundred dollars, but the treasurer may issue certificates of such fractional parts not bonded, which said certificate shall be transferable, and entitled to be funded as before provided. The treasurer shall indorse on the back of each claim so received and liquidated the date on which he received the same, and from whom, and the number of the bond issued in exchange therefor, and such claim shall be filed in the office of the secretary of state.

Taxes.

SEC. 6. For the payment within twenty years of the principal and interest of the bonds issued under this act, there shall be levied, annually, until the bonds are paid and promptly collected in the same manner as is or may be provided by law for ordinary state taxes, a tax of thirty cents on each one hundred dollars of the assessed value of real and personal property in the state, and the fund derived from this tax shall be set apart and applied exclusively to the payment of the interest on the bonds herein provided, and the final redemption of the principal of said bonds; and the faith of the state of California is hereby pledged for the payment, as herein provided, of the bonds issued by virtue of this act, and the interest thereon, and all moneys that may be received by the state of California from the United States government on account of the "civil fund," so called, are hereby irrevocably pledged to the payment of the principal and interest on the bonds issued under this act. A willful refusal or neglect by supervisors, or any other officer, to levy or collect the taxes imposed by this act, shall be a misdemeanor, and the person or persons convicted thereof

shall be removed from office and punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Advertisement for redemption of bonds.

SEC. 7. Whenever, on the first day of February, in any year, there remains in the sinking and interest fund ten thousand dollars, or more than will pay the interest on the following July, as hereinbefore provided, the treasurer shall advertise, for the space of one week, in one daily newspaper published in English in the city of New York, and for one month in one daily newspaper in English at the state capital, for sealed proposals, to be opened one month after the expiration of such publication by the treasurer, in presence of the governor or controller, at the state capital, for the surrender of bonds issued under this act, which advertisement shall state the amount of money he has on hand for the purpose of redemption, and they shall accept the lowest proposals, at rates not exceeding par value, as may redeem the greatest amount of bonds, until the amount of cash on hand for the redemption is exhausted; provided, however, in case a sufficient amount of such bonds shall not be offered as aforesaid to exhaust the sinking fund to a less amount than ten thousand dollars, then it is hereby made the duty of the treasurer to advertise in two newspapers, one in New York and one at the capital of this state, for three months, which advertisement shall state the amount in the sinking fund, and the number of bonds, numbering them in the order of their issuance, which such fund is set apart to pay and discharge; and if such bonds so numbered in such advertisement shall not be presented for payment and cancellation within three months from the expiration of such publication, then such fund shall remain in the treasury to discharge such bonds whenever presented; but they shall draw no interest after such publication as last aforesaid. [*Amendment, approved April* 27, 1860, 281.]

Record of proceedings.

SEC. 8. The treasurer of state shall keep full and particular account and record of all his proceedings under this act, and of the bonds redeemed and surrendered, and he shall transmit to the governor an abstract of all his proceedings under this act, with his annual report, to be by the governor laid before the legislature; and all books and papers pertaining to the matters provided for in this act shall at all times be open to the inspection of any party interested, or the governor, or the attorney-general, or a committee of either branch of the legislature, or a joint committee of both.

Payment of interest.

SEC. 9. It shall be the duty of the treasurer to pay the interest on said bonds when the same falls due, out of said interest fund, if sufficient, and if said fund be not sufficient, then to pay the deficiency out of the general fund; provided, that the controller of state shall first draw his warrant on the treasurer, payable to the order of said treasurer, for the amount of interest money about to become due, which said interest warrant shall be drawn at least one month previous to the maturing of the interest.

Examination, registration, and cancellation of claims.

SEC. 10. It shall be the duty of the governor and controller to attend, at least once in each month, at the treasurer's office, while said bonds are being issued, to examine all claims received by the treasurer as aforesaid, and cause the same to be registered and canceled in such manner as to prevent them from being reissued or put in circulation.

Claims to be funded.

SEC. 11. The following are specified as the claims which are entitled to be received and funded under this act:

1. Civil bonds of the state issued under the funding acts passed in the years eighteen hundred and fifty-one, eighteen hundred and fifty-two, eighteen hundred and fifty-three, eighteen hundred and fifty-five, and eighteen hundred and fifty-six, which are now outstanding, with interest due on the same, when presented as appears by the coupons.

2. Controller's warrants, drawn under sanction of law, for civil expenses, prior to January first, A. D. eighteen hundred and fifty-seven, and now outstanding and unpaid. But the provisions of this act shall not authorize the funding of any of those warrants, the registration and indorsement of which were canceled or required to be canceled by the provisions of "An act to cancel the registration and indorsement of certain warrants, and prohibiting the payment of the same," approved January thirtieth, A. D. eighteen hundred and fifty-six, or warrants which have been specifically adjudged illegal by any court. And all said warrants specified in the last-mentioned act are hereby expressly excluded from all the benefits and provisions of this act.

3. Just or legal claims against the state, accrued prior to January first, eighteen hundred and fifty-seven, and which may be allowed and audited by act of the legislature.

And if the treasurer of state shall willfully issue bonds upon claims not herein specified as receivable, it shall be deemed a misdemeanor, and he shall be punished as provided in section six of this act, and such bond shall be void.

Claims, when received.

SEC. 12. The claims specified in this act may be received for funding, and bonds therefor may be issued prior to the first day of January, eighteen hundred and fifty-nine, but not afterward; and all claims not presented for funding prior to that time are excluded from the provisions of this act, and such blank bonds prepared under the provisions of this act, as shall then remain on hand, shall be destroyed in the presence of the governor, controller, and treasurer.

Taking effect of act.

SEC. 13. This act shall take effect on the first day of November, A. D. eighteen hundred and fifty-seven, as to all its provisions except those relating to and necessary for its submission to the people, and for returning, canvassing, and proclaiming the votes, which shall take effect immediately.

Act to be submitted to vote.

SEC. 14. This act shall be submitted to the people of the state for their ratification at the next general election, to be holden on the first Wednesday of September, A. D. eighteen hundred and fifty-seven, and the qualified electors of this state shall, at said election, on their ballots for state officers, vote for or against this act; those voting for the same shall write or have printed on their ballots the words "pay the debt," and those voting against the same shall write or have printed on their ballots the words "repudiate the debt."

Votes, subject to what rules.

SEC. 15. The votes cast for and against this act shall be counted, returned, and canceled, and declared in the same manner, and subject to the same rules, as votes cast for the treasurer of state; and if it appear that a majority of all the votes so cast for or against this law, as aforesaid, are in favor of this act, then the same shall have effect as hereinbefore provided, and shall be irrepealable,

until the principal and interest of the liabilities herein created shall be paid and discharged, and the governor shall make proclamation thereof; but if a majority of the votes so cast are against this act, then the same shall become void.

Publication of act before election.

Sec. 16. It shall be the duty of the secretary of state to have this act published in one newspaper in each judicial district of this state, if one be published therein, for three months next preceding the general election, to be holden upon the first Wednesday of September next, for which publication no greater allowance shall be made than the rates allowed by law to the state printer.

An act to provide for paying certain equitable claims against the state of California, and to contract a funded debt for that purpose, approved April 30, 1860, 352. This act authorized the preparation of state bonds to the amount of two hundred thousand dollars, bearing interest at the rate of seven per cent per annum, payable July 1, 1880. It required the levy of a tax of one and one quarter per cent; fixes the first day of February or August as the time to advertise for proposals for the surrender of bonds; limits the funding of claims to January 1, 1862; provides for its taking effect on January 1, 1861, its submission to vote at the general election of 1860, and its publication before that election. With these exceptions, it is identical in language with the foregoing act of April 28, 1857.

An Act in relation to the purchase and sale of state bonds.

[Approved April 2, 1866; 1865-6, 856.]

Board of examiners authorized to make proposals for purchase of bonds.

Section 1. Whenever, on the first day of January or July in any year, the treasurer of state shall advertise, as required by law, for the surrender of civil bonds issued under the acts of eighteen hundred and fifty-seven and eighteen hundred and sixty, the board of examiners, composed of the governor, the secretary of state, and the attorney-general, are hereby authorized and empowered to make proposals to the state treasurer for the surrender of state bonds issued under the provisions of the act named herein. Said proposals shall be made in accordance with law, and shall be received by the treasurer of state in the same manner and under the same restrictions as if received from individuals; and if, upon the opening of said proposals, it is found that the board of examiners have submitted the lowest proposals, not exceeding par value, as will redeem the greatest amount of bonds, then it shall be the duty of the treasurer of state to accept the proposals of the said board in accordance with the provisions of his advertisement.

If proposal accepted, payment to be made in civil bonds of eighteen hundred and sixty-seven.

Sec. 2. If, at any time, proposals for the surrender of bonds shall be made by the board of examiners, and accepted by the treasurer of state, as provided in section one of this act, it shall be the duty of the said board, and they are hereby authorized and empowered, to take from the civil bonds of eighteen hundred and fifty-seven, or eighteen hundred and sixty, deposited in the state treasury to the credit of the school fund, a sufficient amount of state bouds to make up the sum proposed to be surrendered, and deliver them to the treasurer of state, whose duty it shall be to receive and cancel the same. And it shall be the duty of the treasurer of state, and he is hereby authorized and empowered, to set aside to the credit of the said board of examiners the amount to which they are entitled in accordance with their proposals, in gold coin, to be used and applied by the said board as provided in section three of this act, and for no other purpose whatever.

Moneys, how applied.

SEC. 3. Whenever the board of examiners shall make proposals for the surrender of bonds, and the treasurer of state shall accept such proposals, and pay for said bonds as provided in sections one and two of this act, it shall be the duty of the said board to apply to all the money so received to the purchase of state bonds issued under an act granting bounties to the volunteers of this state enlisted in the service of the United States, for issuing bonds to provide funds for the payment of the same, and to levy a tax to pay such bonds, approved April fourth, eighteen hundred and sixty-four; and all the bonds so purchased shall be deposited by the said board in the state treasury to the credit of the school fund of this state, and shall be marked "school fund," as required by law

Duration of act.

SEC. 4. This act shall take effect and be in force from and after its passage, and shall continue in force until all the bonds provided by the bounty act, approved April fourth, eighteen hundred and sixty-four, shall have been sold; provided, that when all of said bounty bonds shall have been disposed of, in accordance with the act providing for their issue, then and from that date the provisions of this act shall cease, and all the duties and powers prescribed herein shall be fully abrogated.

An Act to provide for the payment of the funded indebtedness of the state of California, and to contract a funded debt for that purpose.

[Approved April 2, 1870; 1869-70, 646.]

Loan commissioners.

SECTION 1. For the purpose of liquidating and providing for the payment of the funded indebtedness of the state of California, hereinafter specified, and to lessen the burden of taxation, the governor of the state, the controller of state, and the treasurer of state, and their successors in office, shall constitute a board of commissioners, to be styled the loan commissioners of the state of California, and shall have and exercise the powers and perform the duties hereinafter provided.

To issue bonds.

SEC. 2. The said loan commissioners are hereby authorized to issue and sell not exceeding three millions seven hundred thousand dollars of the bonds of said state, bearing interest at the rate of six per cent per annnm, which interest shall be payable semi-annually in gold coin, on the second days in January in July in each year, at the office of the treasurer of state. The principal of said bonds shall be made payable in gold coin within twenty years after the date of their issue, and shall be of such denominations as the said loan commissioners shall direct, but not less than five hundred dollars; shall bear the date of their issue, and shall be signed by the said loan commissioners, and shall have the seal of the state affixed thereto; and the faith of the state of California is hereby pledged for the payment of said bonds and the interest accruing thereon, as herein provided.

Coupons.

SEC. 3. Coupons for the interest shall be attached to each bond, so that they may be removed without injury or mutilation to the bond; said coupons, consecutively numbered, shall be signed by the treasurer of the state.

Notice of sale.

SEC. 4. Before the sale of any of said bonds, the said loan commissioners shall cause notices of such sale to be published, for the space of one month, in three daily newspapers published in English, one in the city of New York, one in the city of London, England, and one in the capital of the state; in and for the space of one month in a daily newspaper published in French, in the city of Paris, in France, and for the space of one month in a daily newspaper published in German, in the city of Frankfort-on-the-Main, in Germany. Such notice shall specify the amount of bonds to be sold, the rate of interest they shall bear, the day and hour of sale, the place of sale, which shall be at the state capital, and that sealed proposals will be received by the said loan commissioners for the purchase of such bonds. Within one month from the expiration of such publication, and on the day and hour named in said notice, the said loan commissioners shall open all sealed proposals received by them, and shall award the purchase of said bonds to such bidders as will, in their opinion, make the most advantageous bid for the state; provided, that said loan commissioners may reject any or all bids, if they deem it to the advantage of the state; provided further, that they may refuse to make any award unless sufficient security shall be furnished by the bidders for the compliance with the terms of their bids; and provided further, that said bonds shall not be sold at less than ninety-one cents on the dollar, in gold coin, par value.

Records of bonds sold.

SEC. 5. It shall be the duty of the treasurer and controller of state each to keep a separate record of all bonds sold under the provisions of this act, showing the number, date, amount, and rate of interest of each bond, and to whom the same was issued.

Appropriation for expenses.

SEC. 6. The sum of one thousand dollars is hereby appropriated out of the general fund for the payment of the expense that may be incurred by the loan commissioners in having such bonds prepared and said notices published.

Proceeds, how applied.

SEC. 7. The proceeds of such bonds shall be paid into the state treasury, and shall be applied to the payment of the following bonds, in the order of their issuance:

1. The outstanding bonds issued under the act entitled "An act to provide for certain equitable claims against the state of California, and to contract a funded debt for that purpose," approved April twenty-eighth, eighteen hundred and fifty-seven;

2. The outstanding bonds issued under the act of eighteen hundred and sixty;

3. The outstanding soldiers' relief bonds;

4. The outstanding soldiers' bounty bonds.

Exchange of bonds.

SEC. 8. All persons having any of the bonds specified in section seven of this act shall, upon presentation of such bonds to the said loan commissioners, be entitled to exchange them at their par value for bonds authorized to be issued under this act, at the rate of ninety-three cents on the dollar, par value; but no bonds shall be issued for a less sum than five hundred dollars, nor for a fractional part of a hundred dollars; but the said loan commissioners may issue certificates of such fractional part not bonded, which said certificate shall

be transferable, and entitled to be paid out of the proceeds of the sales of any bonds provided for in section seven of this act. The loan commissioners shall cancel each bond so exchanged, and shall indorse on such bond the date on which they received the same, and from whom, the number and amount of the bond issued in exchange therefor, and shall file such bond in the office of the secretary of state

Redemption.

SEC. 9. Whenever there shall be in the state treasury, from the proceeds of the sale of bonds issued under this act, a sum of ten thousand dollars or more, it shall be the duty of the treasurer to advertise in two newspapers, printed in English, one in New York and one in the capital of the state, for two months, which advertisement shall state the amount of money in the treasury applicable to the redemption of bonds, and the number of bonds, numbering therein the order of their issuance, which are redeemable; and three months from the date of the expiration of such advertisement such bonds, unless sooner paid, shall cease to draw interest, but the money for the redemption of such bonds shall remain in the treasury to pay such bonds whenever presented.

Taxes to be levied.

SEC. 10. For the payment, within twenty years, of the principal and interest of the bonds issued under this act, there shall be and is hereby levied annually, after any bonds have been issued under this act, such rate of tax on each one hundred dollars of the assessed value of real and personal property in the state, to be computed by the controller of state on the basis of the assessed value of such property for the preceding year, as shall produce annually, for the first five years, seven per centum of the amount of such bonds issued; for the next ten years thereafter, twelve per centum of the amount of such bonds issued, and thereafter, until all the bonds issued under this act are paid, fifteen per centum of the amount of such bonds issued. The controller shall certify the rate of tax thus computed by him to the several county auditors, and the said auditors are hereby directed and required to enter such rate on the assessment rolls of their respective counties, in the same manner and with the same effect as is provided by law in relation to other state taxes. Every tax levied under the provisions or authority of this act is hereby made a lien against the property assessed, which lien shall attach on the first Monday in March in each year, and shall not be satisfied or removed until such tax has been paid. All moneys derived from taxes authorized by the provisions of this section shall be paid into the state treasury, and shall be applied:

1. To the payment of the interest on the bonds issued by the provisions of this act;

2. To the payment of the principal of such bonds.

Provided, that all moneys remaining in the state treasury on the third day of January in each year, for the first five years after the issuance of any bonds under this act, after all the interest on such bonds then due has been paid, shall be transferred by the treasurer of state to the general fund.

Surrender of bonds.

SEC. 11. Whenever, on the third day of January or July in any year, after the expiration of five years from the date of issuance of any bonds under this act, there remains, after the payment of the interest, as provided in the preceding section, a surplus of ten thousand dollars or more, it shall be the duty of the treasurer to advertise, for the space of one month, in one daily news-

paper published in English in the city of New York, and for one month in one daily newspaper published in English at the state capital, for sealed proposals, to be opened one month after the expiration of such publication by the treasurer, in presence of the governor or controller, at the state capital, for the surrender of bonds issued under this act; which advertisement shall state the amount of money he has on hand for the purpose of redemption; and they shall accept the lowest proposals, at rates not exceeding par value, as may redeem the greatest amount of bonds, until the amount of cash on hand for the redemption is exhausted; provided, however, in case a sufficient amount of such bonds shall not be offered, as aforesaid, to exhaust the sinking fund to a less amount than ten thousand dollars, then it is hereby made the duty of the treasurer to advertise in two newspapers, one in New York and one at the capital of this state, for three months, which advertisement shall state the amount in the sinking fund, and the number of bonds, numbering them in the order of their issuance, which such fund is set apart to pay and discharge; and if such bonds so numbered in such advertisements shall not be presented for payment and cancellation at the expiration of such publications, then such fund shall remain in the treasury to discharge such bonds whenever presented, but they shall draw no interest after the expiration of such publication. Before any of said bonds shall be paid, they shall be presented to the controller, who shall indorse on each bond the amount due thereon, and shall write across the face of each bond the date of its surrender and the name of the person surrendering.

Duty of state treasurer.

SEC. 12. The treasurer of state shall keep a full and particular account and record of all his proceedings under this act, and of the bonds redeemed and surrendered, and he shall transmit to the governor an abstract of all his proceedings under this act, with his annual report, to be by the governor laid before the legislature; and all books and papers pertaining to the matter provided for in this act shall at all times be open to the inspection of any party interested, or the governor, or the attorney-general, or a committee of either branch of the legislature, or a joint committee of both.

Payment of interest.

SEC. 13. It shall be the duty of the treasurer to pay the interest on said bonds, when the same falls due, out of said interest fund, if sufficient; and if said fund be not sufficient, then to pay the deficiency out of the general fund; provided, that the controller of state shall first draw his warrant on the treasurer, payable to the order of said treasurer, for the amount of interest money about to become due, which said interest warrant shall be drawn at least one month previous to the maturing of the interest.

When to take effect.

SEC. 14. This act shall take effect sixty days after the next general election, as to all its provisions except those relating to and necessary for its submission to the people, and for returning, canvassing, and proclaiming the votes, which shall take effect immediately.

To be submitted for ratification.

SEC. 15. This act shall be submitted to the people of the state for their ratification, at the next general election, and the qualified electors of this state shall, at said election, on their ballots for state officers, vote for or against this act; those voting for the same shall write or have printed on their ballots the words

"Refund the debt—Yes," and those voting against the same shall write or have printed on their ballots the words "Refund the debt—No."

Votes, how canvassed.

SEC. 16. The votes cast for and against this act shall be counted, returned, and canceled, and declared in the same manner and subject to the same rules as votes cast for the treasurer of state; and if it appears that a majority of all the votes so cast for or against this law, as aforesaid, are in favor of this act, then the same shall have effect as hereinbefore provided, and shall be irrepealable until the principal and interest of the liabilities herein created shall be paid and discharged, and the governor shall make proclamation hereof; but if a majority of the votes so cast are against this act, then the same shall become void.

Publication of act.

SEC. 17. It shall be the duty of the secretary of state to have this act published in one newspaper in each judicial district of this state, for three months next preceding the general election, for which publication no greater allowance shall be made than the rates allowed by law to the state printer.

An Act granting additional powers to the loan commissioners constituted by an act approved April second, eighteen hundred and seventy.

[Approved March 3, 1874; 1873-4, 235.]

Loan commissioners to dispose of bonds.

SECTION 1. Loan commissioners, constituted by an act entitled "An act to provide for the payment of the funded indebtedness of the state of California, and to contract a funded debt for that purpose," approved April second, A. D. eighteen hundred and seventy, are hereby empowered and authorized to dispose of such bonds as are to be issued under authority of the above-named act, and which are not exchanged for other bonds, or purchased for the benefit of the school and university funds, in any manner they may deem to the best interest of the state; provided, that no bonds shall be sold for a less amount than ninety-five cents on the dollar, par value.

SEC. 2. The sum of five hundred dollars is hereby appropriated out of the general fund for the payment of expenses incurred and to be incurred by the loan commissioners in preparing and issuing the bonds.

SEC. 3. This act shall take effect immediately.

General and specific funds of state—General fund.—The general fund was originally provided for by an act concerning the revenues, funds, expenditure, and property of the state, and management thereof, passed February 20, 1850, 63. It declared what moneys such fund should consist of, and also fixed certain salaries and provided for their payment. It has been superseded. The present law defining the general fund is section 454 of the Political Code, which provides that it shall consist of moneys received into the state treasury and not specifically appropriated to any other fund. The Political Code, sec. 3713, provides the amount of money to be raised by taxation for this fund. The following acts also relate to the subject.

An Act to authorize the transfer to the general fund of money in other funds of the state treasury, and the return thereof to such funds.

[Approved March 21, 1872; 1871-2, 475.]

Transfer of funds.

SECTION 1. Whenever the general fund of the state treasury becomes exhausted, and there is money in other funds not required to meet any accrued demands against said funds, or demands to accrue against said funds, the controller shall report the fact to the governor and treasurer; and if the governor and treasurer find that the money is not needed in such other funds, the gov-

ernor shall order the controller to direct the transfer thereof to the general fund. All money so transferred to the general fund shall be returned to the fund from which it was transferred as soon as there is sufficient money in the general fund to return the same. Nothing in this act shall be so construed as to order or warrant the transfer of any money from any fund so as to in any manner interfere with the object for which such fund was created.

SEC. 2. This act shall take effect immediately.

An Act to authorize the state treasurer to pay controller's warrants, drawn for the salaries of public officers who are entitled to monthly payments from this state.

[Approved March 25, 1874; 1873–4, 593.]

To advance money.

SECTION 1. The state treasurer is hereby authorized, when the general fund is exhausted, to advance the money on the controller's warrants, drawn for the salaries of public officers who are entitled to monthly payments from the state, out of any public funds he may have in charge, keeping said warrants as his vouchers until such time when there shall be money in the general fund to cancel the same, and place them to his credit.

SEC. 2. Nothing in this act shall be so construed as to take money out of any fund against which there are warrants then due, or may become due, or in any way keep claimants out of their just demands.

SEC. 3. This act to take effect immediately.

An act to authorize the controller and treasurer of state to transfer certain funds. Approved April 1, 1876; 1875–6, 723. This act directed the transfer from the general fund to the credit of the swamp-land fund of forty-seven thousand nine hundred and twenty-three dollars and twenty-four cents, and provided for its distribution among certain swamp-land districts.

For other acts authorizing the controller and treasurer to transfer funds, see Stats. 1877–8, 201; 1880, 1.

State school fund.—The state school fund was first placed in proper condition by an act concerning the school fund of the state of California, approved April 14, 1863, 298. Besides the moneys therein referred to, various other amounts arising from the sale of school lands and other sources have been added to the school fund. The Political Code, sec. 435, defines the manner of keeping an account of the fund; and the same code, sec. 3713, provides the sum to be raised for it by taxation. The following acts also relate to the subject:

An act in relation to the purchase and sale of state bonds, approved April 2, 1866; 1865–6, 856. This act is given in full, Pol. Code, sec. 680.

An act to authorize the state board of examiners to invest the moneys derived from state school lands in the bonds of the several counties of this state. Approved February 2, 1872; 1871–2, 54. This act was repealed by an act approved March 3, 1883; 1883, 25.

Interest and sinking fund.—This fund, as it now exists, was provided for by the following act:

An Act to authorize the controller and treasurer of state to transfer certain funds.

[Approved March 28, 1874; 1873–4, 745.]

Transfer of funds.

SECTION 1. The controller and treasurer of state are hereby authorized to transfer the balance remaining to the credit of the interest and sinking fund of eighteen hundred and sixty, soldiers' relief interest fund, Pacific railroad fund, state capitol bonds interest fund of eighteen hundred and seventy, and state capitol bonds interest fund of eighteen hundred and seventy-two, to the interest and sinking fund of eighteen hundred and fifty-seven, which fund shall be known as the interest and sinking fund.

SEC. 2. This act shall take effect and be in force on and after June fifteenth, eighteen hundred and seventy-four.

See also an act to provide for the payment of coupons issued by the Central Pacific Railroad Company, approved March 19, 1878; 1877–8, 335.

The interest and sinking fund of 1857 was provided for by an act to provide for paying certain equitable claims against the state of California, and to contract a funded debt for that purpose, approved April 28, 1857, 300, given *ante*, "Funds." The interest and sink-

ing fund of 1860 was provided for by an act to provide for paying certain equitable claims against the state of California, and to contract a funded debt for that purpose, approved April 30, 1860, 352, referred to *ante*, "Funds." The Political Code, sec. 3713, provided the sums to be raised by taxation for those funds. By the amendment of 1873–4 to the above-cited section of the Political Code, the new interest and sinking fund is the only one, and it seems that out of it all outstanding bonds are to be paid. The same section, 3713, provides the sum to be raised by taxation for such fund.

An act to authorize the controller and treasurer of state to transfer certain funds, approved March 4, 1881; 1881, 38.

This act authorized the transfer of one hundred and three thousand dollars from the interest and sinking fund, "to be known as the 'funded debt fund' of 1873."

State capitol special fund and state capitol bonds interest and sinking fund.—These funds were provided for by an act authorizing the issuance of state bonds to the amount of two hundred and fifty thousand dollars, to be known as state capitol bonds, approved April 4, 1870; 1869–70, 724.

State capitol special fund of 1872, and state capitol bonds interest and sinking fund of 1872.—These funds were provided for by an act authorizing the issuance of state bonds to the amount of two hundred and fifty thousand dollars, to be known as state capitol bonds of 1872, approved March 28, 1872; 1871–2, 694.

Soldiers' relief fund and soldiers' bounty fund.—These funds were provided for by an act for the relief of the enlisted men of the California volunteers in the service of the United States, approved April 27, 1863, 662; an act granting bounties to the volunteers of this state enlisted in the service of the United States, for issuing bonds to provide funds for the payment of the same, and to levy a tax to pay such bonds, approved April 4, 1864; 1863–4, 486; and an act granting bounties to the volunteers of this state, to provide for issuance of bonds and for a tax for their payment, approved April 4, 1864; 1863–4, 486; amended March 16, 1870; 1869–70, 318. The funding act of April 2, 1870, given *ante*, "Funds," made provision for the conversion of the bonds issued under the foregoing mentioned acts into new state bonds. The Political Code, sec. 3713, provides the sum to be raised by taxation for the interest and sinking fund of the new state bonds referred to.

University fund.—An act to create a commission to examine and report the condition of certain funds (of the University of California), approved April 1, 1878; 1877–8, 928.

An Act to authorize the controller and treasurer of state to transfer certain funds

[Approved March 12, 1885.]

SECTION 1. The controller and treasurer of state are hereby authorized to transfer, on December first, eighteen hundred and eighty-five, the sum of ninety thousand dollars, or any portion thereof, from any fund or funds in the state treasury having a surplus, to the interest and sinking fund, to pay the semi-annual interest on the outstanding state bonds due January first, eighteen hundred and eighty-six; provided that said sum of ninety thousand dollars, or any portion thereof that shall have been so transferred, shall, upon receipt of a sufficient amount into the interest and sinking fund during the thirty-seventh fiscal year, be retransferred to the fund or funds from which said sum shall have been borrowed.

SEC. 2. This act shall take effect immediately.

Other state funds.—There are various funds provided for by the Political Code, Penal Code, and subsequent statutes, which are merely intended for the purpose of securing a proper application of moneys specially appropriated. Such are the "military fund," the "insane asylum fund," the "state wharf and dock fund," the "state prison fund," the "university fund," and others. They may be considered as little more than names under which accounts are to be kept in the state treasury.

GAME.

See FISH.

The general law in relation to the taking, killing, or destroying of game is contained in the Penal Code, secs. 626 et seq. But there are several special and local acts which are in force in particular localities. They are noted under the heads of the proper counties, but may be here again referred to:

An act for the protection of fish and game in certain portions of Napa county, approved March 26, 1872; 1871–2, 550.

An act for the protection of game in Nevada county, approved February 6, 1874; 1873–4, 80.

There are also a number of acts to prevent hunting and shooting on private grounds, which will be found given or referred to under the head, "Hunting on Private Grounds," *post*.

An act to prevent the destruction of deer on Monte Diablo, in Contra Costa county, approved March 28, 1878; 1877–8, 599. See Pen. Code, sec. 628.

An act authorizing boards of supervisors to fix bounties for the killing of certain wild animals, approved March 15, 1883, Stats. 1883, p. 368, will be found: Pol. Code, sec. 4046.

GAS.

See GAS FRANCHISES.

An Act to regulate the quality and standard illuminating power and the price of gas in all cities within the state of California having a population of one hundred thousand or more.

[Approved March 4, 1878; 1877-8, 107.]

Quality and price of gas to be fixed by whom.

SECTION 1. That in all cities in the state of California having a population of one hundred thousand or more, the local legislative body thereof, whether known and designated as the board of supervisors, or board of aldermen, or common council, or board of trustees, or otherwise, are hereby authorized and required to fix the standard quality and illuminating power of gas to be furnished, and the rate and price for each one thousand cubic feet to be charged therefor by any person, company, or corporation whose pipes or mains are or shall be laid down in the streets or highways of such city, for the purpose of supplying gas for the use of such city, or for the inhabitants thereof, or for such city and its inhabitants; provided, however, that said board or local authority shall not fix or establish the standard quality and illuminating power of gas in such city at less than sixteen-candle power, or such that five cubic feet of gas per hour so furnished shall give light at least equal to that afforded by the combustion of sixteen standard sperm candles consuming one hundred and twenty grains of sperm each per hour, the burner to be used in making such test to be that best adapted to the economical consumption of gas; and provided further, that such board of supervisors, or local legislative authority, by whatever name it may be known, shall not fix or establish the rate or price of gas so furnished to such city or its inhabitants at any greater price or rate than three dollars per thousand cubic feet.

Mayor to appoint an inspector.

SEC. 2. It shall be the duty of the mayor of each city having the population mentioned in section one of this act, and such mayor is hereby required, within thirty days after the passage and approval of this act, to appoint, subject to the approval of the board of supervisors, or other local legislative body aforesaid, a person of competent experience and knowledge of and concerning the proper qualities and illuminating power of gas, and who shall not be directly or indirectly interested in or connected with any person, company, or corporation engaged in the manufacture or furnishing of illuminating gas in such city, or elsewhere, either to such city or its inhabitants, or any of them, either as a stockholder or otherwise, who shall be known and designated as gas inspector of such city, who shall hold his said office for the term of two years, or until his successor shall be appointed and qualified; subject, however, to removal from his said office by the mayor, with the concurence of a majority of the board of supervisors, or other local legislative board aforesaid, for any one of the following causes, to wit, by reason of any interest in the manufacture or furnishing of gas in such city, whether such interest existed at the date of his appointment or was afterward acquired, or for want of competent knowledge, skill, or experience to enable him properly to discharge the duties of said office, or for any neglect, misconduct, or inefficiency in the discharge of the duties of said office, to the prejudice of such city, or its inhabitants, or any of them. The person so appointed shall, before he enters upon the duties of said office, and within ten days after his appointment and confirmation, take and subscribe

an oath or affirmation before the county judge of the county in which such city is situated, that he will faithfully and impartially perform and discharge all the duties required by this act and the ordinances or resolutions of said board passed or adopted under and pursuant to the provisions thereof, as such gas inspector of such city, and shall also, within the same time, give bond to the city in and for which he is appointed, in the sum of ten thousand dollars, with sureties to be approved by said board, conditioned for the faithful performance of the duties of said office, which said oath and bond shall be filed with the clerk of said board. Such gas inspector shall be entitled to a salary to be fixed and allowed by said board, which shall be paid monthly out of the general fund of such city.

Duty of inspector.

SEC. 3. It shall be the duty of such inspector, immediately upon his appointment and qualification as such officer, as aforesaid, to make a careful examination and inquiry, by inspection, letter, or otherwise, as to the quality and illuminating power of the gas furnished and used in the principal cities of the United States, and the prices charged therefor, and also the comparative cost of the manufacture and supply of gas in other cities of the United States, with the cost of the manufacture and supply of the same in the city for which he is such inspector, and report fully the result of such examination and information to said board within six months after his appointment and qualification; and upon receiving such reports, said board shall proceed to fix and establish the quality and standard illuminating power of gas to be used in such city, and the maximum price to be charged therefor; and such standard and price may be changed by said board from time to time, not oftener than once every year, as increased consumption or other circumstances may in their judgment require.

Same.

SEC. 4. After said board shall have fixed and established the quality and illuminating power, and the price of gas, as hereinbefore, it shall be the duty of such inspector to examine and inspect, from time to time, at least once every week, without notice to the person, company, or corporation furnishing the same, the quality and illuminating power of the gas furnished to such city and the inhabitants thereof, and in case the same shall fall below the standard fixed by said board, the said inspector shall forthwith report the same to said board; and at such other times as he may be requested thereto by the mayor or any committee of said boards, he shall report to said board upon any and all matters connected with the manufacture, supply, and consumption of gas coming within the scope of his official duties, and specially upon any subject or subjects, matters or things, connected therewith and specified in such request.

Certain acts declared unlawful.

SEC. 5. After said board shall have fixed and established the quality and standard illuminating power of the gas, and the price per thousand cubic feet, as in this act provided to be charged therefor, it shall be unlawful for any person, company, or corporation to furnish to such city, or any inhabitant thereof, or other person therein, for illuminating purposes, gas of a lower standard or quality, or to charge or receive therefor a higher price than is provided by said board, under the authority and subject to the limitations of this act; and for every violation of the provisions of this act, or the provisions of any order, resolution, or ordinance of said board made in pursuance thereof, every such

person, company, or corporation shall incur a penalty of not less than one hundred nor more than one thousand dollars, to be recovered in a civil action in the name and for the use of such city, in any court of competent jurisdiction; and each day upon which such person, company, or corporation shall, without reasonable cause or excuse therefor, furnish gas of a lower quality or standard illuminating power than that fixed by said board, shall constitute and be considered and held one violation thereof, and each month or shorter period for which said person, company, or corporation shall take an account of gas consumed, and for which they shall charge or receive a price greater than that fixed by said board, shall be held and regarded as one offense, and any number of such offenses of either class, or both, may be joined in the same action, and the several penalties for the several violations proved or confessed in said action may be united and recovered in the same judgment; and such person, company, or corporation shall also be liable to such city and to any and each person or corporation who shall be injured by any such violation, in double the amount of damages actually sustained.

Actions tried, by whom.

SEC. 6. All actions for penalties under the provisions of this act shall be tried by the court, unless a jury be demanded by either party; and when such action shall be tried by a jury, the jury shall find, as to each violation charged in the complaint, that "the defendant is guilty," or "the defendant is not guilty;" and upon each charge in respect to which the jury has found the defendant guilty, the court shall fix the penalty, and render judgment for the aggregate amount of such penalties, together with costs of suit.

SEC. 7. All penalties recovered under this act shall be paid into the general fund of such city.

SEC. 8. This act shall apply to the city and county of San Francisco, as well as to cities whose municipal government is distinct from the county in which they are located.

SEC. 9. This act shall take effect immediately.

GAS FRANCHISES.

See GAS.

The Political Code, sec. 19, continues in force the following act in relation to the laying down of gas-pipes and location of gas-works:

An Act concerning gas companies.

[Approved April 4, 1870; 1869-70, 815.]

Granting of franchises to gas companies.

SECTION 1. From and after the passage of this act, it shall be lawful for the corporate authorities of every city and town in this state, and for the supervisors of the city and county of San Francisco, to grant to any gas company the privilege of laying down pipes in the streets or alleys of such towns and cities, including San Francisco, as aforesaid, and supplying gas for the lighting of the streets and buildings thereon; such privilege to continue for a term not exceeding twenty-five years.

Conditions.

SEC. 2. Every such license or privilege shall be upon condition that the authorities shall have the right at any time to allow similar privileges to other companies; and upon the further condition, that the laying down of such pipes shall be subject to the reasonable direction of the said authorities, and shall do

as little injury as possible to the paving, planking, or macadamizing of the streets and alleys aforesaid; and that whenever the paving, planking, or macadamizing of such streets or alleys is displaced for the purpose of laying down pipes or removing the same, or making connections therewith or repairs thereto, such paving, planking, or macadamizing shall be replaced in as good order as practicable by such company.

Contract for lighting streets.

SEC. 3. The authorities of every such town or city, including San Francisco as aforesaid, may contract with any gas company for lighting the streets thereof; but no such contract shall be made at a fixed rate for a longer term than five years, nor at a variable or other rate for a longer term than ten years; nor shall any such contract be made at a higher rate than that now paid in the city of San Francisco.

Location of works.

SEC. 4. In addition to the foregoing provisions, the authorities of such towns and cities shall affix to every license or contract such conditions as will be for the benefit of the public, and may secure their enforcement by any orders or ordinances which they may deem necessary. They may also control the location and construction of works so that they may be erected in suitable localities to give the least discomfort or annoyance to the public.

SEC. 5. This act shall take effect immediately.

GOATS.

An Act to prevent buck goats running at large.

[Approved March 23, 1878; 1877-8, 437.]

Buck goats not to run at large.

SECTION 1. It shall not be lawful for the owner or owners of any buck goat or buck goats, or any person or persons in charge of such goat or goats, to turn or permit such goat or goats to be turned or run at large in any county of this state.

Penally for violation.

SEC. 2. Any person violating the provisions of the first section of this act shall, upon complaint and conviction before a justice of the peace of the proper township, be fined in a sum not less than five dollars, nor more than twenty dollars, to be collected as fines are now by law collected.

SEC. 3. This act shall take effect on and after the first day of July, eighteen hundred and seventy-eight.

In addition to the foregoing general act in relation to goats, there are various acts referring to the running at large of and trespassing by these animals. Some of them are noted under the head of "hogs" and "sheep." The following, passed in 1878, may be referred to here:

An act to prevent the trespassing of goats on inclosed lands in Amador county, approved March 26, 1878; 1877-8, 536.

An act to prevent sheep and goats from being herded or running at large in certain portions of Lake county, approved March 29, 1878; 1877-8, 685.

GOPHERS.

See SQUIRRELS.

HASTINGS COLLEGE OF LAW.

See UNIVERSITY.

HIDES OF CATTLE.

The Political Code, sec. 19, continued in force the following act:

An Act for the better protection of stock-raisers in the counties of Fresno, Tulare, Monterey, and Mariposa.

[Approved March 20, 1866, 322.]

Hides to be kept.

SECTION 1. All persons slaughtering horned cattle shall keep the hides of all cattle slaughtered by them, with the ears attached, for fifteen days; and it shall be the duty of all persons having such hides in their possession to exhibit the same for examination on demand being made by any person for that purpose.

Record of slaughtered animals.

SEC. 2. It shall be the duty of all persons slaughtering cattle, hogs, and other animals to keep a true record of all such animals slaughtered by them, of marks, brands, and date of slaughtering, of whom such animals were purchased, and date of purchase, in a book to be kept for that purpose; and shall also enter in said book a copy of the bill of sale received by him from the person or persons who sold said cattle, and shall exhibit the same to any person requesting an examination of such book. All persons slaughtering any number of animals whatsoever shall be considered within the meaning of the provisions of this act.

Branding calves.

SEC. 3. It shall not be lawful for any person or persons to mark and brand any calves or cattle, except such calves as are following their mothers, or have been previously marked at other times than the general spring and fall rodeos; and the unlawful marking, branding, and butchering calves shall be considered within the meaning of the provisions of this act.

Penalty.

SEC. 4. Any person failing or refusing to comply with the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof before a justice of the peace or other court having competent jurisdiction over misdemeanors, shall for each offense be punished by fine in a sum not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty nor more than one hundred and eighty days, or by both such fine and imprisonment.

Reward for informer.

SEC. 5. It shall be lawful for any person cognizant of or otherwise knowing of the fact of the violation of this act, to enter a complaint before a justice of the peace or a grand jury, and if conviction be made, such informant shall receive one half of the fine when collected, and the remainder paid to the county treasurer, to be placed by him in the county school fund.

SEC. 6. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 7. This act shall take effect and be in force from and after its passage.

HOGS.

The acts concerning hogs found running at large seem to be continued in force by the Political Code, sec. 19, subd. 23. They are, in due sense, laws in relation to estrays or trespassing animals, and should be read in connection with the laws on those subjects. It may be observed, however, that if it was the intention to continue enactments, which like these involve penalties and forfeitures, the declaration to that effect ought to be plainer. Following will be found the principal acts on this subject, and references to other acts of more restricted application.

Moneys, how applied.

SEC. 3. Whenever the board of examiners shall make proposals for the surrender of bonds, and the treasurer of state shall accept such proposals, and pay for said bonds as provided in sections one and two of this act, it shall be the duty of the said board to apply to all the money so received to the purchase of state bonds issued under an act granting bounties to the volunteers of this state enlisted in the service of the United States, for issuing bonds to provide funds for the payment of the same, and to levy a tax to pay such bonds, approved April fourth, eighteen hundred and sixty-four; and all the bonds so purchased shall be deposited by the said board in the state treasury to the credit of the school fund of this state, and shall be marked "school fund," as required by law

Duration of act.

SEC. 4. This act shall take effect and be in force from and after its passage, and shall continue in force until all the bonds provided by the bounty act, approved April fourth, eighteen hundred and sixty-four, shall have been sold; provided, that when all of said bounty bonds shall have been disposed of, in accordance with the act providing for their issue, then and from that date the provisions of this act shall cease, and all the duties and powers prescribed herein shall be fully abrogated.

An Act to provide for the payment of the funded indebtedness of the state of California, and to contract a funded debt for that purpose.

[Approved April 2, 1870; 1869-70, 646.]

Loan commissioners.

SECTION 1. For the purpose of liquidating and providing for the payment of the funded indebtedness of the state of California, hereinafter specified, and to lessen the burden of taxation, the governor of the state, the controller of state, and the treasurer of state, and their successors in office, shall constitute a board of commissioners, to be styled the loan commissioners of the state of California, and shall have and exercise the powers and perform the duties hereinafter provided.

To issue bonds.

SEC. 2. The said loan commissioners are hereby authorized to issue and sell not exceeding three millions seven hundred thousand dollars of the bonds of said state, bearing interest at the rate of six per cent per annnm, which interest shall be payable semi-annually in gold coin, on the second days in January in July in each year, at the office of the treasurer of state. The principal of said bonds shall be made payable in gold coin within twenty years after the date of their issue, and shall be of such denominations as the said loan commissioners shall direct, but not less than five hundred dollars; shall bear the date of their issue, and shall be signed by the said loan commissioners, and shall have the seal of the state affixed thereto; and the faith of the state of California is hereby pledged for the payment of said bonds and the interest accruing thereon, as herein provided.

Coupons.

SEC. 3. Coupons for the interest shall be attached to each bond, so that they may be removed without injury or mutilation to the bond; said coupons, consecutively numbered, shall be signed by the treasurer of the state.

Notice of sale.

SEC. 4. Before the sale of any of said bonds, the said loan commissioners shall cause notices of such sale to be published, for the space of one month, in three daily newspapers published in English, one in the city of New York, one in the city of London, England, and one in the capital of the state; in and for the space of one month in a daily newspaper published in French, in the city of Paris, in France, and for the space of one month in a daily newspaper published in German, in the city of Frankfort-on-the-Main, in Germany. Such notice shall specify the amount of bonds to be sold, the rate of interest they shall bear, the day and hour of sale, the place of sale, which shall be at the state capital, and that sealed proposals will be received by the said loan commissioners for the purchase of such bonds. Within one month from the expiration of such publication, and on the day and hour named in said notice, the said loan commissioners shall open all sealed proposals received by them, and shall award the purchase of said bonds to such bidders as will, in their opinion, make the most advantageous bid for the state; provided, that said loan commissioners may reject any or all bids, if they deem it to the advantage of the state; provided further, that they may refuse to make any award unless sufficient security shall be furnished by the bidders for the compliance with the terms of their bids; and provided further, that said bonds shall not be sold at less than ninety-one cents on the dollar, in gold coin, par value.

Records of bonds sold.

SEC. 5. It shall be the duty of the treasurer and controller of state each to keep a separate record of all bonds sold under the provisions of this act, showing the number, date, amount, and rate of interest of each bond, and to whom the same was issued.

Appropriation for expenses.

SEC. 6. The sum of one thousand dollars is hereby appropriated out of the general fund for the payment of the expense that may be incurred by the loan commissioners in having such bonds prepared and said notices published.

Proceeds, how applied.

SEC. 7. The proceeds of such bonds shall be paid into the state treasury, and shall be applied to the payment of the following bonds, in the order of their issuance:

1. The outstanding bonds issued under the act entitled "An act to provide for certain equitable claims against the state of California, and to contract a funded debt for that purpose," approved April twenty-eighth, eighteen hundred and fifty-seven;

2. The outstanding bonds issued under the act of eighteen hundred and sixty;

3. The outstanding soldiers' relief bonds;

4. The outstanding soldiers' bounty bonds.

Exchange of bonds.

SEC. 8. All persons having any of the bonds specified in section seven of this act shall, upon presentation of such bonds to the said loan commissioners, be entitled to exchange them at their par value for bonds authorized to be issued under this act, at the rate of ninety-three cents on the dollar, par value; but no bonds shall be issued for a less sum than five hundred dollars, nor for a fractional part of a hundred dollars; but the said loan commissioners may issue certificates of such fractional part not bonded, which said certificate shall

be transferable, and entitled to be paid out of the proceeds of the sales of any bonds provided for in section seven of this act. The loan commissioners shall cancel each bond so exchanged, and shall indorse on such bond the date on which they received the same, and from whom, the number and amount of the bond issued in exchange therefor, and shall file such bond in the office of the secretary of state.

Redemption.

SEC. 9. Whenever there shall be in the state treasury, from the proceeds of the sale of bonds issued under this act, a sum of ten thousand dollars or more, it shall be the duty of the treasurer to advertise in two newspapers, printed in English, one in New York and one in the capital of the state, for two months, which advertisement shall state the amount of money in the treasury applicable to the redemption of bonds, and the number of bonds, numbering therein the order of their issuance, which are redeemable; and three months from the date of the expiration of such advertisement such bonds, unless sooner paid, shall cease to draw interest, but the money for the redemption of such bonds shall remain in the treasury to pay such bonds whenever presented.

Taxes to be levied.

SEC. 10. For the payment, within twenty years, of the principal and interest of the bonds issued under this act, there shall be and is hereby levied annually, after any bonds have been issued under this act, such rate of tax on each one hundred dollars of the assessed value of real and personal property in the state, to be computed by the controller of state on the basis of the assessed value of such property for the preceding year, as shall produce annually, for the first five years, seven per centum of the amount of such bonds issued; for the next ten years thereafter, twelve per centum of the amount of such bonds issued, and thereafter, until all the bonds issued under this act are paid, fifteen per centum of the amount of such bonds issued. The controller shall certify the rate of tax thus computed by him to the several county auditors, and the said auditors are hereby directed and required to enter such rate on the assessment rolls of their respective counties, in the same manner and with the same effect as is provided by law in relation to other state taxes. Every tax levied under the provisions or authority of this act is hereby made a lien against the property assessed, which lien shall attach on the first Monday in March in each year, and shall not be satisfied or removed until such tax has been paid. All moneys derived from taxes authorized by the provisions of this section shall be paid into the state treasury, and shall be applied:

1. To the payment of the interest on the bonds issued by the provisions of this act;

2. To the payment of the principal of such bonds.

Provided, that all moneys remaining in the state treasury on the third day of January in each year, for the first five years after the issuance of any bonds under this act, after all the interest on such bonds then due has been paid, shall be transferred by the treasurer of state to the general fund.

Surrender of bonds.

SEC. 11. Whenever, on the third day of January or July in any year, after the expiration of five years from the date of issuance of any bonds under this act, there remains, after the payment of the interest, as provided in the preceding section, a surplus of ten thousand dollars or more, it shall be the duty of the treasurer to advertise, for the space of one month, in one daily news-

paper published in English in the city of New York, and for one month in one daily newspaper published in English at the state capital, for sealed proposals, to be opened one month after the expiration of such publication by the treasurer, in presence of the governor or controller, at the state capital, for the surrender of bonds issued under this act; which advertisement shall state the amount of money he has on hand for the purpose of redemption; and they shall accept the lowest proposals, at rates not exceeding par value, as may redeem the greatest amount of bonds, until the amount of cash on hand for the redemption is exhausted; provided, however, in case a sufficient amount of such bonds shall not be offered, as aforesaid, to exhaust the sinking fund to a less amount than ten thousand dollars, then it is hereby made the duty of the treasurer to advertise in two newspapers, one in New York and one at the capital of this state, for three months, which advertisement shall state the amount in the sinking fund, and the number of bonds, numbering them in the order of their issuance, which such fund is set apart to pay and discharge; and if such bonds so numbered in such advertisements shall not be presented for payment and cancellation at the expiration of such publications, then such fund shall remain in the treasury to discharge such bonds whenever presented, but they shall draw no interest after the expiration of such publication. Before any of said bonds shall be paid, they shall be presented to the controller, who shall indorse on each bond the amount due thereon, and shall write across the face of each bond the date of its surrender and the name of the person surrendering.

Duty of state treasurer.

SEC. 12. The treasurer of state shall keep a full and particular account and record of all his proceedings under this act, and of the bonds redeemed and surrendered, and he shall transmit to the governor an abstract of all his proceedings under this act, with his annual report, to be by the governor laid before the legislature; and all books and papers pertaining to the matter provided for in this act shall at all times be open to the inspection of any party interested, or the governor, or the attorney-general, or a committee of either branch of the legislature, or a joint committee of both.

Payment of interest.

SEC. 13. It shall be the duty of the treasurer to pay the interest on said bonds, when the same falls due, out of said interest fund, if sufficient; and if said fund be not sufficient, then to pay the deficiency out of the general fund; provided, that the controller of state shall first draw his warrant on the treasurer, payable to the order of said treasurer, for the amount of interest money about to become due, which said interest warrant shall be drawn at least one month previous to the maturing of the interest.

When to take effect.

SEC. 14. This act shall take effect sixty days after the next general election, as to all its provisions except those relating to and necessary for its submission to the people, and for returning, canvassing, and proclaiming the votes, which shall take effect immediately.

To be submitted for ratification.

SEC. 15. This act shall be submitted to the people of the state for their ratification, at the next general election, and the qualified electors of this state shall, at said election, on their ballots for state officers, vote for or against this act; those voting for the same shall write or have printed on their ballots the words

"Refund the debt—Yes," and those voting against the same shall write or have printed on their ballots the words "Refund the debt—No."

Votes, how canvassed.

SEC. 16. The votes cast for and against this act shall be counted, returned, and canceled, and declared in the same manner and subject to the same rules as votes cast for the treasurer of state; and if it appears that a majority of all the votes so cast for or against this law, as aforesaid, are in favor of this act, then the same shall have effect as hereinbefore provided, and shall be irrepealable until the principal and interest of the liabilities herein created shall be paid and discharged, and the governor shall make proclamation hereof; but if a majority of the votes so cast are against this act, then the same shall become void.

Publication of act.

SEC. 17. It shall be the duty of the secretary of state to have this act published in one newspaper in each judicial district of this state, for three months next preceding the general election, for which publication no greater allowance shall be made than the rates allowed by law to the state printer.

An Act granting additional powers to the loan commissioners constituted by an act approved April second, eighteen hundred and seventy.

[Approved March 3, 1874; 1873-4, 235.]

Loan commissioners to dispose of bonds.

SECTION 1. Loan commissioners, constituted by an act entitled "An act to provide for the payment of the funded indebtedness of the state of California, and to contract a funded debt for that purpose," approved April second, A. D. eighteen hundred and seventy, are hereby empowered and authorized to dispose of such bonds as are to be issued under authority of the above-named act, and which are not exchanged for other bonds, or purchased for the benefit of the school and university funds, in any manner they may deem to the best interest of the state; provided, that no bonds shall be sold for a less amount than ninety-five cents on the dollar, par value.

SEC. 2. The sum of five hundred dollars is hereby appropriated out of the general fund for the payment of expenses incurred and to be incurred by the loan commissioners in preparing and issuing the bonds.

SEC. 3. This act shall take effect immediately.

General and specific funds of state—General fund.—The general fund was originally provided for by an act concerning the revenues, funds, expenditure, and property of the state, and management thereof, passed February 20, 1850, 63. It declared what moneys such fund should consist of, and also fixed certain salaries and provided for their payment. It has been superseded. The present law defining the general fund is section 454 of the Political Code, which provides that it shall consist of moneys received into the state treasury and not specifically appropriated to any other fund. The Political Code, sec. 3713, provides the amount of money to be raised by taxation for this fund. The following acts also relate to the subject.

An Act to authorize the transfer to the general fund of money in other funds of the state treasury, and the return thereof to such funds.

[Approved March 21, 1872; 1871-2, 475.]

Transfer of funds.

SECTION 1. Whenever the general fund of the state treasury becomes exhausted, and there is money in other funds not required to meet any accrued demands against said funds, or demands to accrue against said funds, the controller shall report the fact to the governor and treasurer; and if the governor and treasurer find that the money is not needed in such other funds, the gov-

ernor shall order the controller to direct the transfer thereof to the general fund. All money so transferred to the general fund shall be returned to the fund from which it was transferred as soon as there is sufficient money in the general fund to return the same. Nothing in this act shall be so construed as to order or warrant the transfer of any money from any fund so as to in any manner interfere with the object for which such fund was created.

SEC. 2. This act shall take effect immediately.

An Act to authorize the state treasurer to pay controller's warrants, drawn for the salaries of public officers who are entitled to monthly payments from this state.

[Approved March 25, 1874; 1873–4, 593.]

To advance money.

SECTION 1. The state treasurer is hereby authorized, when the general fund is exhausted, to advance the money on the controller's warrants, drawn for the salaries of public officers who are entitled to monthly payments from the state, out of any public funds he may have in charge, keeping said warrants as his vouchers until such time when there shall be money in the general fund to cancel the same, and place them to his credit.

SEC. 2. Nothing in this act shall be so construed as to take money out of any fund against which there are warrants then due, or may become due, or in any way keep claimants out of their just demands.

SEC. 3. This act to take effect immediately.

An act to authorize the controller and treasurer of state to transfer certain funds. Approved April 1, 1876; 1875–6, 723. This act directed the transfer from the general fund to the credit of the swamp-land fund of forty-seven thousand nine hundred and twenty-three dollars and twenty-four cents, and provided for its distribution among certain swamp-land districts.

For other acts authorizing the controller and treasurer to transfer funds, see Stats. 1877–8, 201; 1880, 1.

State school fund.—The state school fund was first placed in proper condition by an act concerning the school fund of the state of California, approved April 14, 1863, 298. Besides the moneys therein referred to, various other amounts arising from the sale of school lands and other sources have been added to the school fund. The Political Code, sec. 435, defines the manner of keeping an account of the fund; and the same code, sec. 3713, provides the sum to be raised for it by taxation. The following acts also relate to the subject:

An act in relation to the purchase and sale of state bonds, approved April 2, 1866; 1865–6, 856. This act is given in full, Pol. Code, sec. 680.

An act to authorize the state board of examiners to invest the moneys derived from state school lands in the bonds of the several counties of this state. Approved February 2, 1872; 1871–2, 54. This act was repealed by an act approved March 3, 1883; 1883, 25.

Interest and sinking fund.—This fund, as it now exists, was provided for by the following act:

An Act to authorize the controller and treasurer of state to transfer certain funds.

[Approved March 28, 1874; 1873–4, 745.]

Transfer of funds.

SECTION 1. The controller and treasurer of state are hereby authorized to transfer the balance remaining to the credit of the interest and sinking fund of eighteen hundred and sixty, soldiers' relief interest fund, Pacific railroad fund, state capitol bonds interest fund of eighteen hundred and seventy, and state capitol bonds interest fund of eighteen hundred and seventy-two, to the interest and sinking fund of eighteen hundred and fifty-seven, which fund shall be known as the interest and sinking fund.

SEC. 2. This act shall take effect and be in force on and after June fifteenth, eighteen hundred and seventy-four.

See also an act to provide for the payment of coupons issued by the Central Pacific Railroad Company, approved March 19, 1878; 1877–8, 335.

The interest and sinking fund of 1857 was provided for by an act to provide for paying certain equitable claims against the state of California, and to contract a funded debt for that purpose, approved April 28, 1857, 300, given *ante*, "Funds." The interest and sink-

Record.

SEC. 6. To keep at the home a record of their proceedings, which shall be accessible to the public during the hours from nine A. M. to four P. M., excepting on legal holidays.

Annual reports.

SEC. 7. To report annually in the month of December, to the governor, a statement of receipts and expenditures, the condition of the home, the number of inmates, and the number of beneficiaries doing work at their own residences, and such other matters touching the management of the home as they may deem proper. The annual report must be verified by the oath of the president of the board of directors. The superintendent of state printing is hereby authorized to print annually two thousand copies of said report, which copies the board must circulate in the manner appearing to them to be in the best interests of the home.

SEC. 8. The board of directors is empowered to purchase from time to time such supplies as may be suitable to the requirements of the manufacturing and other departments of the home, and to audit the bills therefor, and to forward the same to the state board of examiners. When approved by said state board, the controller must issue his warrants in payment thereof.

SEC. 9. The board of directors is empowered and authorized to fix the market price of all wares manufactured in the home, and all wares manufactured elsewhere by the non-resident beneficiaries, and to provide for and regulate the sale of all such manufactured wares. The board is hereby authorized to fix the compensation of common laborers and all other employees at the home, whose wages are not herein established.

Condition of admission.

SEC. 10. It shall not be a condition for the admission of any applicant that he be of such physical strength as to be able to work every day. And the board is authorized to receive and maintain at the home, free of charge, or at a nominal charge, such aged and enfeebled blind persons as seem to them proper, and not in conflict with the interest of the home

Price of labor.

SEC. 11. The board of directors is authorized and empowered to grade and fix the prices of skilled and unskilled labor. The board may fix the amount of work required in the various departments to constitute a day's labor, and, in accordance with such regulations, may permit inmates to work at piece-work.

Letting out work.

SEC. 12. The board of directors may authorize work to be let out to blind people, so that such beneficiaries as in their judgment may require it shall receive it at their residence; and for such piece-work liberal prices shall be paid, so as to equal, as nearly as possible, the compensation of resident laborers. But in no case shall the board incur any indebtedness for labor contracts with beneficiaries, resident or otherwise, except when there is sufficient money on hand to pay the same.

Dormitories.

SEC. 13. The board shall provide dormitories for males and females in separate apartments, and may prescribe conditions, not inconsistent with the provisions of this act, for the admission of applicants.

No compensation.

SEC. 14. The directors shall receive no compensation for their services.

GAS.

See GAS FRANCHISES.

An Act to regulate the quality and standard illuminating power and the price of gas in all cities within the state of California having a population of one hundred thousand or more.

[Approved March 4, 1878; 1877–8, 107.]

Quality and price of gas to be fixed by whom.

SECTION 1. That in all cities in the state of California having a population of one hundred thousand or more, the local legislative body thereof, whether known and designated as the board of supervisors, or board of aldermen, or common council, or board of trustees, or otherwise, are hereby authorized and required to fix the standard quality and illuminating power of gas to be furnished, and the rate and price for each one thousand cubic feet to be charged therefor by any person, company, or corporation whose pipes or mains are or shall be laid down in the streets or highways of such city, for the purpose of supplying gas for the use of such city, or for the inhabitants thereof, or for such city and its inhabitants; provided, however, that said board or local authority shall not fix or establish the standard quality and illuminating power of gas in such city at less than sixteen-candle power, or such that five cubic feet of gas per hour so furnished shall give light at least equal to that afforded by the combustion of sixteen standard sperm candles consuming one hundred and twenty grains of sperm each per hour, the burner to be used in making such test to be that best adapted to the economical consumption of gas; and provided further, that such board of supervisors, or local legislative authority, by whatever name it may be known, shall not fix or establish the rate or price of gas so furnished to such city or its inhabitants at any greater price or rate than three dollars per thousand cubic feet.

Mayor to appoint an inspector.

SEC. 2. It shall be the duty of the mayor of each city having the population mentioned in section one of this act, and such mayor is hereby required, within thirty days after the passage and approval of this act, to appoint, subject to the approval of the board of supervisors, or other local legislative body aforesaid, a person of competent experience and knowledge of and concerning the proper qualities and illuminating power of gas, and who shall not be directly or indirectly interested in or connected with any person, company, or corporation engaged in the manufacture or furnishing of illuminating gas in such city, or elsewhere, either to such city or its inhabitants, or any of them, either as a stockholder or otherwise, who shall be known and designated as gas inspector of such city, who shall hold his said office for the term of two years, or until his successor shall be appointed and qualified; subject, however, to removal from his said office by the mayor, with the concurence of a majority of the board of supervisors, or other local legislative board aforesaid, for any one of the following causes, to wit, by reason of any interest in the manufacture or furnishing of gas in such city, whether such interest existed at the date of his appointment or was afterward acquired, or for want of competent knowledge, skill, or experience to enable him properly to discharge the duties of said office, or for any neglect, misconduct, or inefficiency in the discharge of the duties of said office, to the prejudice of such city, or its inhabitants, or any of them. The person so appointed shall, before he enters upon the duties of said office, and within ten days after his appointment and confirmation, take and subscribe

an oath or affirmation before the county judge of the county in which such city is situated, that he will faithfully and impartially perform and discharge all the duties required by this act and the ordinances or resolutions of said board passed or adopted under and pursuant to the provisions thereof, as such gas inspector of such city, and shall also, within the same time, give bond to the city in and for which he is appointed, in the sum of ten thousand dollars, with sureties to be approved by said board, conditioned for the faithful performance of the duties of said office, which said oath and bond shall be filed with the clerk of said board. Such gas inspector shall be entitled to a salary to be fixed and allowed by said board, which shall be paid monthly out of the general fund of such city.

Duty of inspector.

SEC. 3. It shall be the duty of such inspector, immediately upon his appointment and qualification as such officer, as aforesaid, to make a careful examination and inquiry, by inspection, letter, or otherwise, as to the quality and illuminating power of the gas furnished and used in the principal cities of the United States, and the prices charged therefor, and also the comparative cost of the manufacture and supply of gas in other cities of the United States, with the cost of the manufacture and supply of the same in the city for which he is such inspector, and report fully the result of such examination and information to said board within six months after his appointment and qualification; and upon receiving such reports, said board shall proceed to fix and establish the quality and standard illuminating power of gas to be used in such city, and the maximum price to be charged therefor; and such standard and price may be changed by said board from time to time, not oftener than once every year, as increased consumption or other circumstances may in their judgment require.

Same.

SEC. 4. After said board shall have fixed and established the quality and illuminating power, and the price of gas, as hereinbefore, it shall be the duty of such inspector to examine and inspect, from time to time, at least once every week, without notice to the person, company, or corporation furnishing the same, the quality and illuminating power of the gas furnished to such city and the inhabitants thereof, and in case the same shall fall below the standard fixed by said board, the said inspector shall forthwith report the same to said board; and at such other times as he may be requested thereto by the mayor or any committee of said boards, he shall report to said board upon any and all matters connected with the manufacture, supply, and consumption of gas coming within the scope of his official duties, and specially upon any subject or subjects, matters or things, connected therewith and specified in such request.

Certain acts declared unlawful.

SEC. 5. After said board shall have fixed and established the quality and standard illuminating power of the gas, and the price per thousand cubic feet, as in this act provided to be charged therefor, it shall be unlawful for any person, company, or corporation to furnish to such city, or any inhabitant thereof, or other person therein, for illuminating purposes, gas of a lower standard or quality, or to charge or receive therefor a higher price than is provided by said board, under the authority and subject to the limitations of this act; and for every violation of the provisions of this act, or the provisions of any order, resolution, or ordinance of said board made in pursuance thereof, every such

person, company, or corporation shall incur a penalty of not less than one hundred nor more than one thousand dollars, to be recovered in a civil action in the name and for the use of such city, in any court of competent jurisdiction; and each day upon which such person, company, or corporation shall, without reasonable cause or excuse therefor, furnish gas of a lower quality or standard illuminating power than that fixed by said board, shall constitute and be considered and held one violation thereof, and each month or shorter period for which said person, company, or corporation shall take an account of gas consumed, and for which they shall charge or receive a price greater than that fixed by said board, shall be held and regarded as one offense, and any number of such offenses of either class, or both, may be joined in the same action, and the several penalties for the several violations proved or confessed in said action may be united and recovered in the same judgment; and such person, company, or corporation shall also be liable to such city and to any and each person or corporation who shall be injured by any such violation, in double the amount of damages actually sustained.

Actions tried, by whom.

SEC. 6. All actions for penalties under the provisions of this act shall be tried by the court, unless a jury be demanded by either party; and when such action shall be tried by a jury, the jury shall find, as to each violation charged in the complaint, that "the defendant is guilty," or "the defendant is not guilty;" and upon each charge in respect to which the jury has found the defendant guilty, the court shall fix the penalty, and render judgment for the aggregate amount of such penalties, together with costs of suit.

SEC. 7. All penalties recovered under this act shall be paid into the general fund of such city.

SEC. 8. This act shall apply to the city and county of San Francisco, as well as to cities whose municipal government is distinct from the county in which they are located.

SEC. 9. This act shall take effect immediately.

GAS FRANCHISES.

See GAS.

The Political Code, sec. 19, continues in force the following act in relation to the laying down of gas-pipes and location of gas-works:

An Act concerning gas companies.

[Approved April 4, 1870; 1869-70, 815.]

Granting of franchises to gas companies.

SECTION 1. From and after the passage of this act, it shall be lawful for the corporate authorities of every city and town in this state, and for the supervisors of the city and county of San Francisco, to grant to any gas company the privilege of laying down pipes in the streets or alleys of such towns and cities, including San Francisco, as aforesaid, and supplying gas for the lighting of the streets and buildings thereon; such privilege to continue for a term not exceeding twenty-five years.

Conditions.

SEC. 2. Every such license or privilege shall be upon condition that the authorities shall have the right at any time to allow similar privileges to other companies; and upon the further condition, that the laying down of such pipes shall be subject to the reasonable direction of the said authorities, and shall do

Commitment by police judge or magistrate.

SEC. 2. Any police judge or magistrate of the city and county of San Francisco is hereby empowered to commit any person whom he shall convict of habitual intemperance to said home for a term not exceeding six months; provided, the board of managers of said home may release, by a two-thirds vote of said board of managers, any person so convicted or otherwise placed in said home before his or her sentence shall expire.

Powers of managers.

SEC. 3. The said board of managers are hereby empowered to receive and to detain in said home, under such restrictions and discipline as they shall deem proper, such persons as may be thereto committed or otherwise placed in said home; provided, any court of competent jurisdiction may inquire, by writ of habeas corpus, into such detention or discipline, and release any person therefrom.

By-laws, rules, and regulations.

SEC. 4. The said board of managers shall have power to make by-laws and rules for the government of its body, officers, and employees; to elect, discharge, and pay such officers and employees as may be necessary to manage and carry on said home; and to prescribe rules and regulations for the government and management of the inmates and officers of said home.

Officers.

SEC. 5. The board of managers of said home shall elect, from their number, a president, vice-president, treasurer, and secretary, and prescribe their respective duties and responsibilities.

Penalty for unlawful detention of property.

SEC. 6. Any person having been an officer of said board, or of said home, or an employee or inmate thereof, who shall, after his or her term of office ceases, or employment expires, or has been discharged, retain in his or her possession or control any of the property of said home, or the books or the papers of said board, or seal thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars and not to exceed five hundred dollars, or imprisonment in the county jail not to exceed six months, or both such fine and imprisonment.

Title to lot of land.

SEC. 7. The title to the lot set apart by the board of supervisors of San Francisco, or a committee of said board, to and for the corporation known as the "Home for the Care of Inebriate," is hereby confirmed to said corporation, and the title of said city and county in and to said lot is vested in said corporation forever.

SEC. 8. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 9. This act shall take effect immediately after its passage.

An Act to provide for the care and maintenance of inebriates and certain insane persons in the city and county of San Francisco.

[Approved March 17, 1876; 1875-6, 325.]

Fines, forfeitures, etc., for benefit of inebriates.

SECTION 1. The fines and forfeitures, not exceeding eight hundred dollars in the aggregate, in any one month, imposed and collected by the police judge's court in and for the city and county of San Francisco, from persons arrested

for being drunk or under the influence of liquor, shall be, by the clerk of said police judge's court, immediately paid to the president, secretary, and treasurer, or a majority of them, of the home for the care of inebriates, of said city and county, for the support and maintenance of said home for the care of inebriates, and the construction and improvement of a building for said home for the care of inebriates; and the said president, secretary, and treasurer, and each of them, shall give a good and sufficient bond in the sum of ten thousand dollars, with two or more sufficient sureties, to be approved by the county judge of said city and county, for the faithful management and disbursement of the moneys received by them under the provisions of this act; and the said president, secretary, and treasurer shall semi-annually, and as often as they may be required by the board of supervisors of said city and county, report, under oath, to said board, a detailed statement of all their receipts and disbursements of said moneys; and neither the president, secretary, treasurer, nor any trustee of said home shall be entitled to or receive any fee, salary, emolument, or reward of any kind whatsoever, for any services rendered by them or either of them as such officers.

Clerk of court to take receipts.

SEC. 2. The clerk of said police judge's court shall take from the president, secretary, and treasurer aforesaid, or a majority of them, a receipt in duplicate for all money paid to them under the provisions of this act, one of which he shall file in the said police judge's court and the other with the clerk of the board of supervisors of said city and county.

Insane persons.

SEC. 3. All persons in said city and county charged with being insane, and pending their examination, or found to be insane and en route for a state insane asylum, shall be placed in the said home, and shall be cared for by the officers thereof, while in said home, without charge to said city and county.

SEC. 4. All acts and parts of acts in conflict with the provisions of this act are hereby repealed, and an act entitled "An act to confer further powers upon the board of supervisors of the city and county of San Francisco," approved April twenty-fifth, eighteen hundred and sixty-three, is hereby repealed.

SEC. 5. This act shall take effect immediately.

HORTICULTURE.

See AGRICULTURE; FORESTRY; FRUIT-TREES AND VINES; VITICULTURE.

HUMBOLDT COUNTY.

References to special and local acts.—Relating to appointment of pilots for bay and harbor of Humboldt, 1851, 325.

Dividing Trinity county and forming new county out of western portion of same, to be called Humboldt, 1853, 161.

Boundaries and seat of justice, 1853, 161; 1856, 37; 1862, 6.

To prevent persons obstructing channel of Humboldt bay and harbor, 1853, 192.

Providing for restoration of certain books, records, maps, and papers to Humboldt county now held by Trinity county, 1854, 36.

Authorizing A. H. Murdock and others to build wharf at Union, 1854, 65.

Authorizing W. Roberts and others to build wharf at Bucksport, 1854, 225.

To fund that portion of debt of Trinity county accruing previous to May 12, 1853, apportioned to Humboldt county, etc., 1854, 253.

Providing for disposal of lots in towns and villages on public lands, 1855, 168; 1866, 75; 1857, 241; 1860, 5.

Incorporating town of Eureka, 1856, 103; 1857, 22; 1859, 192; 1862, 55; 1863–4, 165.

Creating board of commissioners to examine and report claims of citizens for services rendered and supplies furnished in suppressing Indian hostilities, 1856, 109.

Concerning courts authorized to be held by county judge, 1856, 144.

Fixing compensation of county judge and district attorney, 1857, 14.

Legalizing and confirming election of board of trustees of Eureka, 1857, 22.

To prevent owners of saw-mills and others

obstructing channels of Humboldt bay and harbor, 1857, 66.
To cede certain property to Eureka, 1857, 76.
Authorizing board of supervisors to levy special tax for certain purposes, and to provide for collecting same, 1857, 204; 1858, 24.
Incorporating town of Union, 1858, 7; 1860, 109; 1869–70, 414; 1873–4, 280.
Regulating fees of county surveyor, 1858, 19.
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Concerning jurors, 1859, 51.
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Authorizing county to retain state's portion of poll-tax, etc., to be applied to construct and improve wagon-road from Cloverdale to Yreka, 1859, 323.
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To establish pilots and pilot regulations for Humboldt bay and bar, 1860, 74, 210.
Changing name of town of Union to that of town of Arcata, 1860, 109.
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For the relief of sureties on official bonds of Jesse Wells, late treasurer, 1860, 207.
For the survey of logs, 1860, 154.
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Authorizing R. M. Williams to remove certain human remains, 1861, 408.
For relief of Peter Lothian, former sheriff, 1862, 52.
For payment of expenses incurred in suppression of Indian hostilities, 1862, 54.
Authorizing board of supervisors to levy special tax, 1863, 299.
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Authorizing board of supervisors to annul certain bonds, 1863–4, 459.
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To annul certain bonds, 1865–6, 47.
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To levy special taxes for certain purposes, 1869–70, 31.
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Supervisors, when to meet, 1867–8, 681.
To transfer money from building fund to road fund, 1869–70, 394.
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To aid construction of wagon-road from Round valley, 1869–70, 503.
To aid in construction of telegraph line, 1869–70, 508; 1873–4, 81.
Changing time for settlement with state, 1869–70, 424.
To provide for auditing claims and reduction of taxation, 1869–70, 546.
To create board of harbor commissioners for port of Eureka, 1869–70, 744.
Concerning roads, 1871–2, 105; 1873–4, 103.
Additional notaries public, 1871–2, 159.
Compensation of treasurer and assessor, 1871–2, 169.
Auditing claims and reducing taxation, 1871–2, 171; 1873–4, 171.
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To prevent hunting and shooting on private grounds, 1871–2, 304; 1873–4, 792.
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Fix compensation of county clerk, 1875–6, 81.
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For construction of wagon-road from Grizzly Bluff to Camp Grant, 1875–6, 509.
To make applicable sections 3894 and 3895 of Political Code, 1875–6, 511.
To encourage destruction of certain wild animals, 1875–6, 533.
For construction of maintenance of boom on Mad river, 1875–6, 895.
Repealing act for destruction of certain wild animals, 1877–8, 2.
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Authorizing Mad River Boom and Land Company to construct booms in Humboldt bay, 1877–8, 114.
Concerning trespassing animals, 1877–8, 176.
Authorizing common council of Eureka to sit as board of equalization, 1877–8, 184.
To provide fund for payment of certain indebtedness, 1877–8, 249.
To authorize maintenance of booms in Elk river, 1877–8, 697.
For scaling logs, 1877–8, 779.
To improve Mad river and its north fork, 1877–8, 788.
Authorizing supervisors to pay certain claims, 1885, 54.

HUNTING ON PRIVATE GROUNDS.

An Act to prevent hunting and shooting on private inclosed grounds and the destruction of growing timber on private grounds in certain counties in this state.

[Approved March 8, 1872; 1871–2, 304.]

Poaching prohibited.

SECTION 1. It shall not be lawful for any person or persons to enter upon any inclosed lands belonging to or occupied by another for the purpose of hunting with dogs, or to shoot, kill, take, or destroy any kind of game, or to enter upon private lands, whether inclosed or not, for the purpose of felling or destroying trees to extract honey or other purposes, without first having obtained permission from the owner or agent of such owner or possessor.

Penalties.

SEC. 2. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and shall be punished upon conviction by a fine of not less than ten (10) dollars, nor more than two hundred (200) dollars, or imprisonment in the county jail for a term of thirty days, or by both such fine and imprisonment.

Act applying.

SEC. 3. This act shall apply only to the counties of Alameda, San Mateo, Marin, San Bernardino, San Diego, Colusa, Sacramento, Sonoma, Nevada, Humboldt, Los Angeles, Santa Barbara, Contra Costa, San Luis Obispo, and Mendocino. [*Amendment, approved March* 30, 1874; 1873–4, 792; *took effect sixty days after passage.*]

SEC. 4. This act shall take effect from and after its passage.

An Act to prevent persons passing through inclosures and leaving them open, by tearing down fences, or otherwise, and to prevent hunting upon inclosed lands in the state of California.

[Approved March 23, 1876; 1875–6, 408.]

Misdemeanor.

SECTION 1. Every person who shall open any gate, bars, or fence of another, for the purpose of passing through, and shall willfully leave the same open, without the permission of the owner, is guilty of a misdemeanor.

SEC. 2. Every person who willfully opens, tears down, or otherwise destroys any fence on the inclosed land of another is guilty of a misdemeanor.

SEC. 3. Every person who willfully enters upon the inclosed land of another for the purpose of hunting, or who discharges fire-arms or lights camp-fires thereon, without first having obtained permission of the owner or occupant of said land, is guilty of a misdemeanor.

SEC. 4. Every person who willfully, carelessly, or negligently, while hunting or camping upon the inclosed land of another, kills, maims, or wounds an animal, the property of another, is guilty of a misdemeanor.

SEC. 5. Every person who, upon departing from camp, willfully leaves the fire or fires burning or unextinguished is guilty of a misdemeanor.

Penalty.

SEC. 6. Every person found guilty of any of the misdemeanors herein mentioned shall be fined not less than twenty nor more than fifty dollars, and shall be imprisoned in the county jail until such fine be satisfied, not exceeding one day for every two dollars thereof.

SEC. 7. All acts and parts of acts in conflict herewith are repealed; provided, however, nothing herein contained shall be construed as repealing section five hundred and ninety-four of the Penal Code.

SEC. 8. Section three of this act shall not apply to the counties of Los Angeles, San Diego, Sutter, San Benito, Del Norte, El Dorado, Colusa, Yuba, Humboldt, Amador, Tuolumne, Shasta, Plumas, Lassen, Siskiyou, Modoc, Trinity, Sierra, Placer, and Santa Cruz. [*Amendment, approved March* 30, 1878; 1877–8, 776; *took effect immediately.*]

SEC. 9. This act shall take effect immediately.

In addition to the foregoing, there are in force several other special acts of more limited application, which may be referred to as follows:

An act to restrict the hunting or shooting of game in the county of Yolo, approved March 26, 1872; 1871–2, 411.

An act to prohibit the hunting or shooting of game within certain private grounds in the county of Butte, approved March 22, 1872; 1871–2, 477.

An act to prevent hunting and shooting on private grounds in the city and county of San Francisco, approved March 30, 1872; 1871–2, 764.

ILL-FAME, HOUSES OF.

The following act was expressly continued in force by the Political Code, sec. 19, and Penal Code, sec. 23.

An Act for the suppression of Chinese houses of ill-fame.

[Approved March 31, 1866; 1865-6, 641.]

Declared public nuisance.

SECTION 1. All houses of ill-fame, kept, managed, inhabited, or used by Chinese women for the purposes of common prostitution, are hereby declared to be public nuisances, and common repute shall in all such cases be received as competent evidence of the character of the house, the purposes for which it is kept or used, and the character of the women inhabiting it.

Leases invalid.

SEC. 2. Every lease or demise of any house, land, or premises occupied or used for the purposes aforesaid shall be unavailable, and of no force or effect for any purpose in favor of any party cognizant of such unlawful use, and consenting thereto; and such party shall have no right or power, by virtue or in consequence of any such lease or demise, either to withhold the possession of the demised premises from the lessor or to maintain any action for the recovery of any rent therefor; nor shall it be lawful for any person cognizant of and consenting to such unlawful use to collect or receive any rent for any house, premises, or apartments leased, inhabited, or used for the purposes aforesaid; also, as against all such parties, lessees, occupants, or inhabitants of such houses, premises, or apartments, the lessor may, on his own authority, with the assistance of the sheriff or any constable or policeman of the county which shall be rendered him on demand, abate the nuisance, and retake possession of such house, premises, or apartments.

Penalty for collecting rent.

SEC. 3. Any landlord, lessor, or other person cognizant of and consenting to such unlawful use as aforesaid of any land, house, premises, or apartments, occupied, inhabited, or used for the purposes aforesaid, who, as principal, agent, attorney, or otherwise, shall collect or receive any money or other valuable thing as rent or otherwise for the use of the same, shall forfeit to the county, or city and county, where the premises are situated, three times the amount or value thereof, which may be sued for and recovered in the name of such county, or city and county, before any court of competent jurisdiction, and the court trying the cause shall adjudge one half thereof to the person giving information of the offense, and of the witnesses or evidence thereof, and the other half to the use of the public treasury of said county, or city and county; and in all such actions Chinese men and women shall be competent witnesses.

Notice to abate nuisance.

SEC. 4. Besides the remedies now provided by law for the abatement of public nuisances, it shall be lawful for any sheriff, constable, justice of the peace, or other public officer, and it shall be the duty of the mayor, or other presiding officer, and the chief or head of the police force of every town and city, and the duty of the supervisor of every township or district in which any such house of ill-fame shall exist as aforesaid, and each and every of them, severally, to cause notice in writing to be given to all persons who may be owners, lessees, tenants, or occupants of any such house of ill-fame, or of the land whereon the same is situated, and to all persons who may keep, manage, control, inhabit, or use such house, peremptorily requiring the abatement of such nuisance within three days after the service of such notice, and such notice may also be posted upon the outside of the outer door or other conspicuous place upon such house of ill-fame. In towns and cities the notice may be in such form as the mayor or other presiding officer, or the chief or head of the police force may prescribe, and when served, an affidavit, showing the time, place, and manner of service, shall be indorsed upon a duplicate thereof, which shall be returned and filed in the office of the chief or head of the police force, if there be such an officer, and if not, then in the office of the mayor or other presiding officer of such city or town.

Use of premises after notice a misdemeanor.

SEC. 5. Every owner, lessee, tenant, keeper, or manager of any such house of ill-fame, and every owner or lessee of the land whereon the same is situated, who, for the period of thirty days after the service of such notice in manner aforesaid, shall continue to use any such land or premises, or shall knowingly and voluntarily permit or suffer the same to be used for the unlawful purposes aforesaid, shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by fine not less than twenty-five nor more than five hundred dollars, or by imprisonment in the county jail for a term not more than six months, or by both such fine and imprisonment.

When act takes effect.

SEC. 6. This act shall take effect six months from and after its passage.

An Act to amend an act entitled "An act for the suppression of Chinese houses of ill-fame," approved March 31, 1866, *is hereby amended to read as follows* [*so in the printed statutes*]:

[Approved February, 7, 1874; 1873-4, 84.]

Houses of ill-fame.

SECTION 1. All houses of ill-fame, kept, managed, inhabited, or used by women for the purposes of common prostitution, are hereby declared to be

public nuisances; and common repute shall in all such cases be received as competent evidence of the character of the house, the purposes for which it is kept or used, and the character of the women inhabiting it.

SEC. 2. This act shall go into effect immediately.

INDIANS.

An act for the government and protection of Indians, passed April 22, 1850, 408, with its amendments, will be found in the "General Laws," secs. 3650 et seq. Without further legislation, or an adjudication by the supreme court, it will be difficult to determine how much, if any, of it is in force. It is deemed sufficient in this place to thus call attention to the subject.

INDIGENT SICK AND INFIRMARIES.

The Political Code, sec. 4046, provides that the boards of supervisors in their respective counties have jurisdiction and power, under such limitations and restrictions as are prescribed by law, to provide for the care and maintenance of the indigent sick or the otherwise dependent poor of the county; erect, officer, and maintain hospitals therefor, or otherwise provide for the same; and to levy the necessary taxes therefor, etc. This and other provisions in the codes supersede, to some extent, if not entirely, the previous legislation on the subject, except so far as such legislation is to be considered "limitations and restictions prescribed by law." Under the circumstances, it is deemed sufficient to refer to the acts, which may be consulted as follows:

An act to authorize the establishment of county infirmaries for the relief of the indigent, and to amend an act entitled "An act to provide for the indigent sick in the counties of this state," approved March 31, 1855; approved April 18, 1860, 213; amended March 22, 1870; 1869-70, 351. This act was to apply only to the counties whose supervisors should elect to adopt the system therein provided; but, by the amendment of March 22, 1870, Humboldt, Placer, Yuba, Sacramento, Mendicino, Santa Cruz, San Luis Obispo, Shasta, Sierra, Calaveras, Yolo, Plumas, Nevada, Toulumne, Sonoma, and Monterey, were expressly exempted from it. The following special acts were in force at the time of the adoption of the codes in the counties named, or have since been adopted.

Shasta county.—An act to provide for the better maintenance of the indigent sick of Shasta, Siskiyou, and Placer counties, approved May 28, 1856, 60.

Yuba county.—An act to provide for the support of the indigent sick in Yuba county, approved March 31, 1856, 69; amended February 9, 1860, 24.

An act to regulate the care and maintenance of the indigent sick in and for the county of Yuba, approved April 18, 1860, 191; supplemented March 1, 1870; 1869-70, 107.

Amador county.—An act relative to the treatment and care of the indigent sick of the county of Amador, approved March 3, 1866; 1865-6, 160.

Humboldt county.—An act to provide for the relief and maintenance of the indigent sick of Humboldt county, approved February 21, 1870; 1869-70, 91.

An act authorizing the supervisors to levy a tax for the care and maintenance of the indigent sick of Humboldt county, approved April 1, 1870; 1869-70, 546.

An act to provide for the relief and maintenance of the dependent poor and indigent sick of Humboldt county, approved February 10, 1876; 1875-6, 41; supplemented March 27, 1876; 1875-6, 488.

Klamath county.—An act to provide for the relief and maintenance of the indigent sick of Klamath county, approved January 19, 1870; 1869-70, 9.

An act to provide for the payment of warrants against the hospital fund of Klamath county, approved January 19, 1870; 1869-70, 8.

Mariposa county.—An act entitled "An act to provide for the better maintenance of indigent sick persons in the county of Mariposa," approved February, 3, 1866; 1865-6, 49.

San Mateo county.—Board of trustees authorized to provide for the relief of the indigent sick, by act approved March 22, 1866; 1865-6, 339.

Sierra county.—An act to provide for the care of the indigent sick of the county of Sierra, approved January 29, 1866; 1865-6, 34.

San Francisco city and county.—The laws in regard to the indigent sick in San Francisco are a part and portion of the complicated system known as the consolidated government. Powers of making appropriations out of the general fund are given to the board of supervisors, particularly by the act of April 4, 1863, 168.

Sacramento county.—The laws in regard to the indigent sick in Sacramento county are a portion of the acts providing for the government of that county, the principal of which is the act of April 25, 1863, 503.

Tehama county.—An act to provide for the pauper sick of Tehama county, approved April 25, 1863, 481.

Sonoma county.—An act to provide for the better maintenance of the indigent sick of Sonoma county, approved April 25, 1863, 579.

Butte county.—An act to provide for the indigent sick in the county of Butte, approved March 10, 1867, 72.

Tuolumne county.—An act relating to the hospital affairs of Tuolumne county, approved April 14; 1857, 108.

Placer county.—An act in relation to the indigent sick of the county of Placer, approved April 17, 1862, 262.

Supervisors authorized to levy a special tax for the support of common schools and indigent sick, by act approved January 29, 1866; 1865-6, 35.

Trinity county.—An act to provide for the maintenance of the indigent sick of the county of Trinity, approved March 16, 1858, 66.

Calaveras county.—An act to provide for the better maintenance of the indigent sick of Calaveras county, approved April 21, 1860, 228.

Nevada county.—An act to provide for the better maintenance of the indigent sick of the county of Nevada, approved March 4, 1861, 33.

Siskiyou county.—An act to provide for the better maintenance of the indigent sick of Siskiyou county, approved April 22, 1861, 212.

An act to provide for the maintenance of the indigent sick in certain townships therein named, in Siskiyou county, approved March 24, 1870; 1869–70, 361; amended March 2, 1872; 1871–2, 215.

Del Norte county.—An act to provide for the care of the indigent sick in Del Norte county, approved February 28, 1872; 1871–2, 169.

INDUSTRIAL HOME OF ADULT BLIND.

See Home of Adult Blind.

INYO COUNTY.

References to special and local acts.—Organization and boundaries of, 1865–6, 355; 1870, 421; 1871–2, 316.

In twelfth senatorial district, 1865–6, 357.

In sixteenth judicial district, 1865–6, 863.

Terms of district courts, 1865–6, 863; 1867–8, 33.

Notaries public in, 1865–6, 865.

To levy special tax for building purposes, 1867–8, 12; 1869–70, 47.

To provide for payment of debt, 1867–8, 152; 1869–70, 421.

Fees and salaries, 1867–8, 448; 1869–70, 148.

To sell certain real estate, 1867–8, 502.

Legal districts defined, 1867–8, 563.

For the relief of Anna Lee, 1867–8, 664.

Leave of absence to county clerk, 1869–70, 404.

Empowering supervisors to sell lots in town of Independence, 1871–2, 49.

Defining boundary line between Inyo and Mono counties, 1871–2, 316.

Issue of bonds for erection of bridges and buildings, 1871–2, 328.

Salary of district attorney, 1871–2, 654, 799.

To protect growing crops, 1871–2, 658.

In fourth congressional district, 1871–2, 714.

Leave of absence to H. M. Isaacs, treasurer, 1873–4, 42.

For relief of Round Valley school district, 1873–4, 80.

Fixing salaries of certain officers, 1873–4, 177, 510.

Regulating traveling fees of sheriff and constables, 1873–4, 236.

Levy of special tax to pay for bridge, 1873–4, 326.

In fourth senatorial district, 1873–4, 366.

Providing for carrying on county government, 1873–4, 374.

Concerning employment of teachers, 1873–4, 509.

Notaries public in, 1873–4, 574.

For construction of railroad to Los Angeles, 1873–4, 772.

To protect agriculture, 1873–4, 824.

Fixing compensation of assessor, 1875–6, 81.

Providing for improvement of public roads, 1875–6, 421.

Extending time for publishing delinquent tax list, 1877–8, 64.

Fixing salary of county treasurer, 1877–8, 157.

Fixing salary of assessor, 1877–8, 256.

To regulate traveling fees of sheriff and constables, 1877–8, 372.

For distribution of school moneys, 1877–8, 747.

JUDGES OF THE PLAINS.

The Political Code, sec. 19, continued in force all acts in relation to judges of the plains, which consist of the following and inserted amendments:

An Act concerning judges of the plains (jueces del campo), and defining their duties.

[Passed April 25, 1851, 515.]

Supervisors to appoint.

Section 1. The board of supervisors of each county in this state may, at their first regular meeting in each year, appoint such number of judges of the plains for their respective counties as they may deem necessary. Said judges of the plains shall hold their office for the term of one year, and until their successors are appointed and qualified. [*Amendment, approved April* 25, 1863, 497.]

Duties.

Sec. 2. Judges of the plains are hereby required, and it is made their duty, to attend all rodeos, or gathering of cattle, whether for the purpose of marking and branding, or for the purpose of separating cattle, when called upon by any ranchero, farmer, or owner of stock, that may be made in their respective counties. [*Amendment, approved April* 25, 1863, 497.]

To decide disputes as to ownership of cattle.

SEC. 3. Whenever any dispute arises respecting the ownership, mark, or brand of any horse, mule, jack, jenny, or horned cattle, it shall be the duty of the judges of the plains to decide on such disputes.

Appeal from decision.

SEC. 4. Any party interested in the dispute of the ownership, mark, or brand of any animals as enumerated above, may appeal from the decision of the judges of the plains to a justice of the peace of the township where such dispute may arise; provided, such appeal be made within twenty-four hours after the judgment has been notified to him.

Persons traveling with cattle, the property of others, to have certificate of owners.

SEC. 5. All persons traveling with cattle, sheep, hogs, horses, or mules, shall, in case said animals be not of their own mark and brand, be obliged to procure from the person or persons from whom they obtain such cattle, or from the justice of the peace residing nearest to the farm or place where they may obtain the same, a certificate of the number and kind of such cattle, and the mark and brand which distinguished the same; and they shall allow such animals to be subject to the inspection of owners of lands through which they may pass, and upon arriving at any city, town, or village, shall present themselves to a judge of the plains, and state the number and kind of such animals; and it shall be the duty of the judge of the plains to examine the band or drove, and accompany them out of the precinct of such city, town, or village.

When cattle to be detained.

SEC. 6. That if the number and kind of animals do not agree with the report of the owner or person in charge, and with the certificates in his possession, the judge of the plains shall detain the band or drove, and take the owner or person in charge before the nearest magistrate for examination.

Duty of judge of the plains as to arrests.

SEC. 7. The judge of the plains shall arrest and take before any magistrate any person who may be accused to him, or whom he has reasonable ground to suspect of killing, hiding, or otherwise taking away cattle, horses, or other animals belonging to others, and shall execute any warrant delivered to him by any magistrate for larceny or other offense concerning said described property; he shall execute any warrant delivered to him by any justice of the peace, for the purposes herein named, and otherwise shall have and exercise the same powers as any sheriff, constable, or police officer, in the cases provided for by the act entitled "An act to punish vagrants, vagabonds, and dangerous and suspicious persons," approved April thirtieth, eighteen hundred and fifty-five, and the act amendatory thereof, approved February nineteenth, eighteen hundred and fifty-six, for making an arrest, or the service of process, or other services in criminal cases, he shall receive the same fees or compensation as the sheriff. [*Amendment, approved March* 31, 1857, 158.]

Dereliction of duty.

SEC. 8. That should complaint be brought against any judge of the plains for dereliction of duty, the same being sustained, shall be considered as guilty of a misdemeanor, and shall be liable to prosecution for the same.

Compensation.

SEC. 9. The judge of the plains shall receive such compensation for his services as may be fixed upon by the board of supervisors at the time of his appointment, not to exceed the sum of five dollars for each day actually

employed, and which shall be paid by the party in default, or by the party requiring his services. [*Amendment, approved April* 25, 1863, 497.]

Powers of supervisors.

SEC. 10. The board of supervisors may make such other local regulations with respect to the duties of the judges of the plains that they may deem necessary. [*Amendment, approved April* 25, 1863, 437.]

SEC. 11. This act shall take effect from and after the first day of July; and all laws now in force in this state having relation to judges of the plains are hereby repealed.

KERN COUNTY.

References to special and local acts.—Act to create and define boundaries, 1865–6, 796; 1867–8, 40.

Terms of district court, 1865–6, 863; 1867–8 33.

Notaries public in, 1865–6, 865.

Act concerning jurors, 1868, 39.

Granting leave of absence to district attorney, 1867–8, 144.

Salary of county judge and district attorney, 1867–8, 41.

For payment of debt due Tulare and Los Angeles, 1867–8, 210.

Contingent fund created, 1867–8, 291.

Fees and salaries, 1867–8, 448; 1869–70, 148.

For the relief of W. B. Ross, 1867–8, 537.

Legal distances defined, 1867–8, 563.

For the relief of Anna Lee, 1867–8, 664.

Special tax for current expenses, 1869–70, 54.

Salary of county judge, 1869–70, 68.

Regulating traveling fees of sheriff, 1871–2, 141; 1875–6, 45.

Salary of district attorney, 1871–2, 654.

Special tax for general fund, 1871–2, 699.

For purchase of McFarland toll-road, 1871–2, 708.

In fourth congressional district, 1871–2, 714.

Irrigation act not to apply to, 1871–2, 945.

To protect agriculture, 1873–4, 50.

Salary and bond of treasurer, 1873–4, 236.

To change road law, 1873–4, 299.

To protect groves of big trees, 1873–4, 347.

To fix salary of county judge, 1873–4, 349.

In fourth senatorial district, 1873–4, 366.

To transfer certain funds, 1873–4, 472.

To extend time for swamp-land district 116 to complete reclamation, 1873–4, 721.

Authorizing issue of bonds to erect county buildings, 1873–4, 783.

Fixing bonds of tax-collector, 1875–6, 16.

To abate squirrel nuisance, 1875–6, 143.

Separating offices of auditor and recorder and regulating salaries, 1875–6, 151, 363.

Fixing salary and bond of assessor, 1875–6, 172.

Concerning water ditches for irrigating, mining, and manufacturing purposes, 1875–6, 547.

Providing for issuance of bonds and payment of indebtedness, 1875–6, 645.

Extending time for publishing delinquent tax list, 1877–8, 64.

As to office of county clerk, 1877–8, 104.

Fixing salary of treasurer, 1877–8, 255.

To determine rights of parties in certain swamp and overflowed lands, 1877–8, 358.

To regulate traveling fees of sheriff, 1877–8, 559.

To provide a new great register, 1877–8, 693.

KLAMATH COUNTY.

References to special and local acts.—Boundaries, 1851, 180; 1855, 200; 1857, 35; 1871–2, 766.

Seat of justice, 1854, 33; 1856, 32.

Concerning records kept previous to organization, 1851, 313.

Providing for organization, 1851, 516.

Authorizing S. G. Whipple and others to build a wharf, 1853, 201.

Legalizing official acts of county judge and other county officers in changing seat of justice, 1854, 33; 1856, 32.

To incorporate Crescent City, 1854, 68; 1867, 56, 225; 1858, 283.

Fixing compensation of county judge, 1855, 150; 1858, 18; 1862, 528.

Regulating fees of certain county officers, 1856, 57.

Creating board of commissioners to examine and report on claims of citizens for services rendered and supplies furnished for suppression of Indian hostilities, 1856, 109.

Concerning county officers, 1856, 136.

Providing for funding of indebtedness, 1857, 144.

Reducing amount of bonds to be given by county officers, 1858, 206.

Authorizing F. F. Marx and others to construct wharf at Trinidad, 1858, 252.

Authorizing location of town site of Crescent City, 1859, 24; 1860, 279; 1862, 226.

Authorizing C. B. Ryder to construct wharf at Trinidad bay, 1859, 189.

For adjustment and final settlement of indebtedness of Del Norte county to Klamath county, 1860, 73.

Concerning office of assessor, 1860, 124.

Authorizing J. Camp and J. M. Fry to remove certain remains, 1861, 55.

Concerning roads and highways, 1861, 160; 1862, 69; 1863–4, 296.

Providing for public administrator, 1862, 43; 1863, 23.

To provide means to pay indebtedness of Del Norte county to Klamath county, 1862, 209.

Authorizing board of supervisors to levy special tax and create redemption fund to pay county indebtedness, 1862, 215.

Fixing salary of district attorney, 1862, 528.

Regulating mileage, 1863, 241.

Regulating fees of officers, 1863, 281.

Authorizing board of supervisors to levy special tax to create contingent fund, 1863–4, 9.

In regard to holding terms of county court, 1863-4, 113.
Concerning roads and highways, 1863-4, 296 (refers to 1862, 69).
Fixing amount of official bonds of county officers, 1863-4, 480.
Indigent sick, 1865-6, 13.
Exempted from act incorporating canal companies, 1865-6, 53, 604; 1867-8, 134.
Privilege granted to remove human remains, 1865-6, 161.
Interest in sinking fund created, 1865-6, 199.
To aid in repairing road and trail from Trinidad, 1865-6, 374;
Exempted from provisions of road law, 1865-6, 381.
Roads and highways, 1865-6, 544; 1871-2, 760; 1873-4, 81.
Funding indebtedness section repealed, 1865-6, 637.
Create redemption fund by special tax, 1865-6, 638.
Act concerning jurors, 1867-8, 39.
Public and private roads, 1867-8, 158; 1869-70, 231.
Indigent sick, 1867-8, 293; 1869-70, 9.
Official bonds of county officers, 1867-8, 349; 1869-70, 48.
Fees and salaries, 1867-8, 448; 1869-70, 148.
For the relief of T. M. Brown, 1867-8, 644.
Payment of warrants against hospital funds, 1869-70, 8; 1871-2, 219.
To transfer money from hospital to indigent fund, 1869-70, 9.
Concerning hogs found running at large, 1869-70, 305.
Changing time of settlement with state, 1869-70, 424.
To aid in constructing telegraph lines, 1869-70, 508; 1873-4, 81.
To prevent the propagation of Scotch or Canada thistle, 1871-2, 214.
To authorize special tax for wagon-road to Scott valley, 1871-2, 552.
Salary of district attorney, 1871-2, 654.
In third congressional district, 1871-2, 714.
To define boundaries, 1871-2, 766.
To empower levy of special tax, 1871-2, 842.
Resolution as to Hoopa valley Indian reservation, 1871-2, 963.
Resolution as to Trinidad harbor, 1871-2, 969.
In twenty-seventh senatorial district, 1873-4, 369.
To annex territory of Klamath to Humboldt and Siskiyou counties, 1873-4, 755; 1875-6, 603.
To credit amount of old balances, 1873-4, 802.

LABOR STATISTICS.

An Act to establish and support a bureau of labor statistics.

[Approved March 3, 1883; 1883, 27.]

Commissioner to be appointed.

SECTION 1. As soon as possible after the passage of this act, and every four years thereafter, the governor of the state shall appoint a suitable person to act as commissioner of a bureau of labor statistics. The headquarters of said bureau shall be located in the city and county of San Francisco; said commissioner to serve for four (4) years, and until his successor is appointed and qualified.

Commissioner's bond.

SEC. 2. The commissioner of the bureau, before entering upon the duties of his office, must execute an official bond in the sum of five thousand (5,000) dollars, and take to [the] oath of office, all as prescribed by the Political Code for state officers in general.

Duties of commissioner.

SEC. 3. The duties of the commissioner shall be to collect, assort, systematize, and present in biennial reports to the legislature, statistical details relating to all departments of labor in the state, such as the hours and wages of labor, cost of living, amount of labor required, estimated number of persons depending on daily labor for their support, the probable chances of all being employed, the operation of labor-saving machinery in its relation to hand-labor, etc. Said statistics may be classified as follows:

1. In agriculture;
2. In mechanical and manufacturing industries;
3. In mining,
4. In transportation on land and water;
5. In clerical and all other skilled and unskilled labor not above enumerated;

6. The amount of cash capital invested in lands, buildings, machinery, material, and means of production and distribution generally;

7. The number, age, sex, and condition of persons employed; the nature of their employment; the extent to which the apprenticeship system prevails in the various skilled industries; the number of hours of labor per day; the average length of time employed per annum, and the net wages received in each of the industries and employments enumerated;

8. The number and condition of the unemployed, their age, sex, and nationality, together with the causes of their idleness;

9. The sanitary condition of lands, workshops, dwellings, the number and size of rooms occupied by the poor, etc.; the cost of rent, fuel, food, clothing, and water in each locality of the state; also the extent to which labor-saving processes are employed to the displacement of hand-labor;

10. The number and condition of the Chinese in the state; their social and sanitary habits; number of married and of single; the number employed and the nature of their employment; the average wages per day at each employment, and the gross amount yearly; the amounts expended by them in rent, food, and clothing, and in what proportion such amounts are expended for foreign and home productions, respectively; to what extent their employment comes in competition with the white industrial classes of the state;

11. The number, condition, and nature of the employment of the inmates of the state prison, county jails, and reformatory institutions, and to what extent their employment comes in competition with the labor of mechanics, artisans, and laborers outside of these institutions;

12. All such other information in relation to labor as the commissioner may deem essential to further the object sought to be obtained by this statute, together with such strictures on the condition of labor and the probable future of the same as he may deem good and salutary to insert in his biennial reports.

State department officers to assist.

SEC. 4. It shall be the duty of all officers of state departments, and the assessors of the various counties of the state, to furnish, upon the written request of the commissioner, all the information in their power necessary to assist in carrying out the objects of this act; and all printing required by the bureau in the discharge of its duty shall be performed by the state printing department, and at least three thousand (3,000) copies of the printed report shall be furnished the commissioner for free distribution to the public.

Penalty for obstructing.

SEC. 5. Any person who willfully impedes or prevents the commissioner or his deputy in the full and free performance of his or their duty shall be guilty of a misdemeanor, and upon conviction of the same shall be fined not less than ten (10) nor more than (50) dollars, or imprisoned not less than seven (7) nor more than thirty (30) days in the county jail, or both.

Office hours.

SEC. 6. The office of the bureau shall be open for business from nine (9) o'clock A. M. until five (5) o'clock P. M. every day except non-judicial days, and the officers thereof shall give to all persons requesting it all needed information which they may possess.

Power of commissioner.

SEC. 7. The commissioner shall have power to send for persons and papers whenever in his opinion it is necessary, and he may examine witnesses under

oath, being hereby qualified to administer the same in the performance of his duty, and the testimony so taken must be filed and preserved in the office of said commissioner; he shall have free access to all places and works of labor.

Commissioner's deputy.

SEC. 8. The commissioner shall appoint a deputy, who shall serve the same time and have the same powers as the said commissioner, as set forth in the preceding sections; he shall procure rooms necessary for offices at a rent not to exceed fifty (50) dollars per month, and may provide the necessary furniture at an expense not to exceed five hundred (500) dollars.

Salaries.

SEC. 9. The salary of the commissioner shall be two thousand four hundred (2,400) dollars per annum, and the salary of the deputy commissioner shall be one thousand five hundred (1,500) dollars per annum, to be audited by the controller, and paid by the state treasurer in the same manner as other state officers are paid; there shall also be allowed a sum not exceeding five hundred (500) dollars per annum for stationery and other contingent expenses of the bureau.

Appropriation.

SEC. 10. The sum of ten thousand five hundred (10,500) dollars is hereby appropriated, out of any money in the state treasury not otherwise appropriated, for the expenses of the bureau for the first two years after its organization.

SEC. 11. This act shall take effect and be in force from and after its passage.

An Act to appropriate money for the support of the bureau of labor statistics.

[Approved March 5, 1885; 1885, 26.]

This act appropriated one thousand six hundred and fifteen dollars.

LAKE COUNTY.

References to special and local acts.—Boundaries, 1861, 560; 1863-4, 111; 1867-8, 142, 168, 269; 1871-2, 305, 903.

Seat of justice, 1861, 563; 1863-4, 97; 1865-6, 839.

Providing for organization, 1861, 560; 1863-4, 111.

Authorizing and requiring board of supervisors to levy special tax for improving and repairing public highway connecting Napa City and Lakeport, 1863, 28, 577; 1863-4, 113.

Conferring further powers upon board of supervisors (regarding road poll-tax), 1863, 498.

Submitting question of removal of county seat to qualified voters, 1863-4, 97.

Authorizing county treasurer to collect and receive certain public moneys as revenue, 1863-4, 110.

Defining legal distances, etc., 1863-4, 154.

Granting right of way over certain lands for construction of wagon-road by G. Shane and others, 1863-4, 168; 1871-2, 62.

Time of holding district court in, 1865-6, 13.

Right of way for wagon-road, 1865-6, 112.

For the relief of J. B. Cook, treasurer, 1865-6, 126.

Time of holding county and probate courts, 1865-6, 159.

Franchise for turnpike road to Seigler valley, 1865-6, 277.

District attorneys and their successors, 1865-6, 325.

Franchise to W. G. Hunt and others to construct lock in Cache creek, 1865-6, 542.

Franchise to W. D. Fiske and associates for turnpike road to Yolo county, 1865-6, 584.

Public highway from Suisun City to Knoxville, 1865-6, 616; 1867-8, 615.

Public roads in, 1865-6, 621.

Salaries of officers, 1865-6, 807.

Treasurers to collect certain revenue, 1865-6, 827.

Removal of county seat, 1865-6, 839.

Franchise to W. G. Hunt repealed, 1867-8, 57.

Compensation of school superintendent, 1867-8, 64.

To provide for collection of revenue, 1867-8, 93, 434.

Franchise for turnpike to Lawley and others, 1867-8, 138.

Boundaries, 1867-8, 142, 168, 269.

To legalize acts of supervisors, 1867-8, 265.

To provide for the erection of county buildings, 1867-8, 270; 1869-70, 79.

Salary of county treasurer, 1867-8, 277.

Fees and salaries, 1867-8, 448; 1869-70, 148.

To legalize assessment of taxes, 1867-8, 552.

To repeal act for location of public highway from Suisun City, 1867-8, 615.

Franchise to W. H. Manlove for wagon-road, 1869-70, 229.

Tax for payment of wagon-road bonds, 1869-70, 230.

To locate county seat, 1869-70, 442.

To allow claim of Thomas Allison, 1871-2, 53.

For payment of claims against county, 1871-2, 156.

To define boundary, 1871-2, 305, 903.
Salary of district attorney, 1871-2, 441, 654.
In third congressional district, 1871-2, 714.
To transfer and loan certain funds, 1873-4, 349.
In twentieth senatorial district, 1873-4, 369.
As to herding of sheep, 1873-4, 434; 1875-6, 312.
Repealing act of 1866 as to roads, 1873-4, 714.
For payment of certain bonds, 1873-4, 764; 1875-6, 396.
For lease of certain toll-road, 1873-4, 798.
To issue bonds for payment of judgment recovered against the county, 1875-6, 209, 405.
To authorize trustees of Lower Lake school district to raise funds, 1875-6, 313.
Concerning roads and highways, 1875-6, 385.
To encourage destruction of certain wild animals, 1875-6, 533; repealed 1877-8, 2.
Concerning county officers, and regulating fees and salaries, 1875-6, 599.
Authorizing supervisors to levy special tax, 1875-6, 648.
Repealing act for destruction of certain wild animals, 1877-8, 2.
Authorizing issue of bonds to pay for Nichols school building, 1877-8, 60.
Legalizing acts of supervisors in relation to Kelly cañon road, 1877-8, 219.
Authorizing formation of a new school district, 1877-8, 254.
Amending act of March 21, 1876, concerning officers' fees and salaries, 1877-8, 256.
Declaring Clear Lake navigable, 1877-8, 630.
To prevent hogs running at large in Lakeport and Lower Lake, 1877-8, 435.
Authorizing tax for extermination of squirrels, 1877-8, 441.
To prevent sheep and goats from being herded or running at large, 1877-8, 685.
Amending act of 1874 for payment of certain bonds, 1880, 81 (Ban. ed. 312).
Amending act of March 23, 1876, concerning payment of certain bonds, 1877-8, 322.

LANDS OF STATE.

See Town Lands; Settlers.

The Political Code, secs. 3395 et seq., contains the present land laws of the state, and supersedes previous legislation in reference to the management and disposition of public land, except in so far as concerns certain statutes given or referred to below as either continued in force or passed since the taking effect of the codes.

In respect to previous legislation, under which rights have vested and which is therefore of great importance, a very full collation of all the acts will be found in the "General Laws," secs. 3970 et seq., and "Supplement," secs. 8662 et seq. Since the publication of the "Supplement" in 1871, several acts were passed bearing upon such previous legislation, which may be referred to as follows:

An act to legalize certain payments of money on account of the purchase of state school lands, approved February 21, 1872; 1871-2, 137.

Acts to amend an act to provide for the management and sale of the lands belonging to the state, approved March 28, 1868, approved March 16, 1872; 1871-2, 383; March 28, 1872; 1871-2, 668; March 28, 1872; 1871-2, 685; and April 1, 1872; 1871-2, 858.

An act to extend the time in which swamp land districts Nos. 68, 69, and 70 shall complete their work of reclamation, approved March 28, 1872; 1871-2, 649.

An act relative to unpaid warrants and assessments in reclamation district No. 108, approved March 29, 1872; 1871-2, 696.

An act to provide for the payment of certain controller's warrants drawn upon the state treasury, approved April 1, 1872; 1871-2, 873.

An act to release the claim of the state of California to certain lands in township 11 north, range 4 east, Mount Diablo base and meridian, approved April 1, 1872; 1871-2; 948.

Salt-marsh and tide lands of San Francisco.—The Political Code, sec. 698 (which has been since repealed), and sec. 3488, expressly continued in force the following acts:

An Act to survey and dispose of certain salt-marsh and tide lands belonging to the state of California.

[Approved March 30, 1868, 716.]

Commissioners to be appointed.

Section 1. The governor of the state shall appoint three persons, who shall constitute a board of tide-land commissioners, and shall hold office for two years from the date of their appointment, and shall have the charge and disposition of all the salt-marsh and tide lands belonging to the state of California, situated in the city and county of San Francisco, as hereinafter provided by this act, and who shall be known and designated in this act as "the commissioners."

Official bonds—Oath—Penalties.

Sec. 2. Before entering upon their duties, and within ten days after their appointment, each of the commissioners shall give to the state of California a bond in the sum of twenty-five thousand dollars, with two or more sureties, conditioned for the faithful performance of the duties required of him under

this act, which bond shall be approved by the governor and state treasurer, in writing indorsed thereon, and be filed in the office of the secretary of state. They shall also severally subscribe to and execute the following oath, which shall be attached to and filed with their bonds:

I, A B, do solemnly swear that I am not interested, directly or indirectly, by or for myself or any other, in any property or interests of property of the state of California within the limits of the city and county of San Francisco, to be sold under or by virtue of this act under which I am appointed a member of the board of tide-land commissioners, and that I will not be so interested during my term of office, nor will I become interested in any property or advantages, except my official salary as fixed by law, to result from the administration of my office or of my associate commissioners.

A violation of the above oath in any of its parts, or any other corrupt or willful violation of duty in office, shall be a felony, for which the person offending shall be punished by a fine of not less than five thousand dollars nor more than twenty-five thousand dollars, and imprisoned not less than one nor more than three years in the state prison. The governor may remove any commissioner and fill the vacancy, as in other cases, according to law.

Duties of president and secretary.

SEC. 3. Within five days after having qualified as prescribed by section two of this act, the commissioners shall meet at San Francisco and organize as a board, choosing one of their number as president, and elect a secretary. The duties of the president shall be to preside at all meetings of the board, and perform such other duties as may be required of him by this act. The secretary shall attend the meetings of the board and shall keep a clear and distinct minute of their proceedings at every meeting. He shall record the name of every commissioner present at each meeting of the board and voting on each resolution, act, or proceeding, whether he voted in the affirmative or negative. Every such vote shall be taken viva voce and by ayes and nays. He shall perform such other services as are required of him by this act, or as may be prescribed for him by the board in accordance therewith. His minutes and record shall be open to inspection by the public during business hours. The secretary may, at any time, be removed by a majority of the commissioners and another appointed. The vote of a majority of the board shall be necessary to adopt any resolution or motion.

Duties of commissioners—Water-line front—Survey.

SEC. 4. The commissioners shall take possession of all the salt-marsh and tide lands, and lands lying under water, to the point that may be established as the water-front, situate along the bay of San Francisco, and situate in the city and county of San Francisco, belonging to the state of California, and have the same surveyed to a point not beyond twenty-four feet water at the lowest stage of the tide, and cause to be prepared two maps of the same, showing the quantity and extent of the property situated as aforesaid, and exhibiting all the municipal subdivisions, streets, alleys, blocks, squares, and lots, which lots shall not exceed in area six thousand two hundred and sixty-one and one sixth square feet each. One of said maps they shall retain in their office at San Francisco, and the other they shall file in the office of the state surveyor. After such preliminary survey the commissioners, in conjunction with the governor of the state, the mayor of San Francisco, and the president of the chamber of commerce of San Francisco, and who shall be known and designated in this act as the

"state board," shall meet and by a two-thirds vote establish the water-line front of San Francisco; but they shall not have power to alter in any manner whatever the water-line front of said city north of the terminus of Second street, as established by the act passed March twenty-sixth, eighteen hundred and fifty-one. After the establishment of the water-line front as above provided, the commissioners shall have all the property lying within the same belonging to the state surveyed, subject to the approval of the state board, into lots and blocks in accordance with the official map survey of the city of San Francisco, reserving so much thereof for streets, docks, piers, slips, canals, drains, or other use necessary for the public convenience and the purposes of commerce, as in their judgment may be required, and have two maps of the same prepared showing the property as resurveyed to the water-line front, the streets, blocks, reservations, and everything necessary to be shown by such maps; one of which maps shall be filed in the surveyor-general's office, and the other shall remain in their office at San Francisco; provided, that the land belonging or granted to the California Dry Dock Company, and the overflowed land in front thereof, shall be and the same is hereby excepted from the operation of this act; provided, that there is hereby granted and donated to the Southern Pacific Railroad Company and the Western Pacific Railroad Company, for a terminus in the city and county of San Francisco, to each of said companies, thirty acres, exclusive of streets, basins, public squares, and docks, out of the aforesaid land, and lying southwardly from Channel street, and outside of the line known as the red-line water-front of Mission bay, to be located jointly or severally by the said respective companies within ninety days from the passage of this act, in a manner and form to be approved by the governor, the mayor of the city and county of San Francisco, and the president of the chamber of commerce of said city, or a majority of them, and so as not to extend beyond twenty-four feet of water at low tide, nor within three hundred feet of such line as may be established, under the provisions of this act, as the permanent water-line front of said city, together with the use of a right of way for said companies to said terminus over the lands of this state for the road-beds and tracks of said company—the board of commissioners herein named to fix and designate the lands (not to exceed a strip two hundred feet in width for both said companies) over which said right of way shall be exercised; and provided, that such grant of land for terminus and the said right of way shall not be construed to interfere with the proper establishment and regulation of streets and alleys, docks, wharves and basins, culverts and sewers, and the laying down of gas and water pipes by the proper authorities of the city and county of San Francisco; and the authorities of the said city and county of San Francisco shall have such jurisdiction and control over said streets and crossings thereof as is or may be conferred by law in other cases, and said railroad companies shall so construct their roads as to cause the least obstruction to travel over and along their roads and at the crossings thereof; provided, that in case either of the said companies shall fail to comply with the conditions of this act such company shall forfeit their rights thereunder; and in such event the other company accepting and using the same for the purposes indicated shall receive thirty acres (exclusive of streets, basins, public squares, and docks) for terminal purposes, and not exceeding one hundred feet in width for right of way; and the said companies are hereby authorized to extend their roads or purchase other roads so as to reach their terminus. And upon the location by the said companies of their terminus and terminal depots and stations upon the said premises, and the expenditure of one hundred thousand

dollars thereon by each of said companies, the governor shall issue patents therefor to the said companies respectively; provided, that unless the said companies shall, within thirty months from the passage of this act, make the terminus of their roads upon the said premises, and expend thereon the said sum of one hundred thousand dollars each, then any grant herein contained shall be void as to the said company so in default, and the lands herein granted to such company shall revert to and be the property of the state; provided, that nothing in this act shall be construed to interfere with the collection of dockage and wharfage by the state, nor with the right of the state to construct, adjoining the property granted, such wharves and docks as may from time to time be provided by law; provided further, that if the two hundred feet herein mentioned for the right of way, or any part thereof, shall at any time be abandoned or cease to be used as such roadway by said companies, then so much thereof as shall be so abandoned or disused shall revert to the state; and provided further, that if the said railroad companies, or either of them, shall not, within thirty days of the organization of the board of commissioners, notify such board of the acceptance of the provisions of this donation and grant, the lands herein proposed to be donated and granted to the said company or companies so failing to notify said board shall be sold at auction, as is otherwise provided in this act; and in the event said companies, or either of them, shall accept the grant or donation herein made, the same shall be in lieu of all other grants of land made or to be made to the company accepting the same in the city and county of San Francisco at the present session of the legislature; provided, that no part of said land granted or donated to said railroad companies shall be located on any land now in the bona fide possession and occupation of any citizen or citizens of this state.

Sale of state lands within water-line.

SEC. 5. After the commissioners shall have complied with the provisions of section four of this act, they shall proceed to sell at public auction, and as hereinafter provided, in some public place in the city of San Francisco, all the right, title, and interest of the state of California in and to the property in the lots described in section four. Such sales shall be by lots, in accordance with the survey and map provided for in section four of this act; provided, that in all cases where any settler was, on the first day of January, A. D. eighteen hundred and sixty-eight, in the bona fide actual possession of any one lot by himself or tenant, and any additional lot in which he shall have had substantial improvements at the time aforesaid, or who had, within one year previous to the first day of January, A. D. eighteen hundred and sixty-eight, substantial improvements upon any such lots which have been destroyed by fire, the commissioners may appraise the value of such lot or lots without the improvements, after sufficient sales have been made to furnish a proper standard of value; and at any time within sixty days after such appraisement such settler may purchase such lot or lots by paying twenty-five per cent of the appraised value thereof at the time of such purchase, and the residue of such appraised value in three equal installments, in one, two, and three years, with interest as hereinafter provided; but the words "substantial improvements," as used in this act, shall not be construed to mean or include any bridge, wharf, fence, or piles driven in the land, capped or otherwise. Such sale shall be conducted in accordance with and under such rules and regulations as the state board shall prescribe; and provided, also, that all sales made under the provisions of this act, whether at private or public sale, before they shall be deemed complete, shall be approved

by the state board, such approval to be made within sixty days after the report of such sales shall be filed with the state board. When such sale shall not be thus approved, such lot or lots shall be subject to resale by the board of commissioners, and the money paid by the purchaser at such disapproved sale shall be returned to him.

Terms of sale.

SEC. 6. The terms of sale shall be as follows: Cash, in gold coin, twenty-five per cent payable on the day of sale to the commissioners; and seventy-five per cent payable in one, two, and three years thereafter, to the state treasurer at Sacramento. The commissioners shall receipt to each purchaser for the amount of his payment of twenty-five per cent, stipulating that if within one, two, or three years thereafter he pays the additional seventy-five per cent, together with legal interest, to the state treasurer at Sacramento, he shall receive a deed from the state of California for the property purchased by him. Notices of sale shall be published in two of the San Francisco daily papers and in one daily paper published at the capital of the state, for thirty days prior to the day of sale. Such notices shall specify the property to be sold, by its numbers and locality as to streets, and by any other descriptions deemed necessary to inform purchasers, as also the time, place, and conditions of sale. The compensation of the auctioneer shall be agreed upon by [the] state board, and shall not exceed the half of one per cent on the gross amount of sales.

Deeds.

SEC. 7. Upon a sale, and after the payment of the twenty-five per cent provided in section six, the commissioners, or a majority of the board, shall sign and execute a deed of grant and release to the purchaser. Such deed shall convey all the right, title, and interest to the state of California in the premises, and shall be prima facie evidence of the regularity of all the preliminary proceedings and sale of the commissioners, and shall also be prima facie evidence of title and right of possession in the grantee, his heirs, and assigns, upon which actions for the recovery of real property, or for injuries thereto, may be maintained and defended in all the courts of this state having jurisdiction thereof, which deed shall be forwarded by the commissioners to the state treasurer, who, upon the surrender to him of the commissioners' receipt for the amount paid said commissioners, [and] the payment to him of the additional seventy-five per cent, with legal interest, as hereinbefore provided by this act, shall deliver the deed to the grantee; and in case of non-compliance with the provisions of this act on the part of the purchaser, by non-payment of either or any installment aforesaid, all the money paid by him shall be forfeited and the property considered as unsold by the state.

Proceeds of sale.

SEC. 8. The commissioners shall pay over to the state treasurer all moneys received by them from sales of property within fifteen days after its receipt. At the close of each sale they shall file with the state board and state controller accounts of such sale, showing the amount of money received by them on account of such sale, the number and description of the property sold, the purchaser's name, and other needful information, and shall verify the same under oath.

Sales may be postponed.

SEC. 9. The commissioners shall have power to adjourn any sale regularly called, from day to day, week to week, or month to month, by public procla-

mation; in which case, each postponement shall be readvertised by publication of notice in the same manner as required in section six of this act; but it shall not be lawful to ordain and call sales at intervals of time less than forty-five days, one sale from another; provided, that the commissioners shall have power at any time during a public sale to pass or discontinue the sale of any property, when they deem such action to be best for the state.

Disposition of proceeds.

SEC. 10. The cash proceeds of all sales shall be placed by the treasurer to the credit of the general fund.

Powers of commissioners.

SEC. 11. The commissioners are empowered to employ a competent surveyor, and such assistants as may be necessary, to make the surveys and maps required by this act; also to rent for their use a suitable office in the city of San Francisco, the rent of which shall not be more than fifty dollars per month, and to do any other act or exercise any other power necessary to carry out the provisions of this act.

Approval of accounts.

SEC. 12. All bills or accounts for expenses incurred in enforcing this act shall be approved by the state board; and the president and secretary, after they shall have been so approved, shall certify the fact to the controller of state, who thereupon shall draw his warrants, payable out of the general fund, for the separate amounts of such bills or accounts, in favor of the parties to whom it is due.

Salaries.

SEC. 13. The salary of the commissioners shall be two thousand five hundred dollars each, payable quarterly out of the general fund. The governor of the state, mayor of the city of San Francisco, and president of the chamber of commerce, shall each be entitled to five hundred dollars to cover expenses incurred in attending to the duties required under this act. The secretary shall receive a salary of one hundred and sixty-six and sixty-six one hundredths dollars per month in full for all services required of him under this act, payable monthly out of the general fund.

Legal advice.

SEC. 14. It shall be the duty of the attorney-general of the state to give such legal advice and render such legal services as may from time to time be required of him by the commissioners in connection with their duties under this act.

Office hours.

SEC. 15. The office of the board shall be kept open by the secretary during all proper business hours, as established by the board.

Deeds to be furnished at expense of state.

SEC. 16. All deeds under the provisions of this act shall be furnished, duly executed, and stamped, at the expense of the state, the stamps to be paid for out of the general fund, in legal-tender notes of the United States—the expense of acknowledgment to be paid in coin out of the general fund; provided, that no charge shall be made for drawing such deeds, but the necessary blank deeds to be furnished by the controller at the expense of the state.

An Act supplementary to the foregoing act of March 30, 1868.

[Approved April 1, 1870, 541.]

Powers of commissioners.

SECTION 1. The board of tide-land commissioners shall have the charge and disposition of all the salt-marsh and tide lands lying under water belonging to

the state of California, and situate in the city and county of San Francisco, and all the salt-marsh and tide lands, to nine feet of water at extreme low tide, within five statute miles of the exterior boundaries of said city and county, as fixed and established in section one (1) of an amendatory and supplementary act, approved April eighteenth, eighteen hundred and fifty-seven; provided, that nothing herein contained shall give said commissioners any control over the lands heretofore granted to the city of Oakland.

SEC. 2. Said commissioners shall have the said lands lying outside the boundary lines of said county and within five miles thereof, as aforesaid, surveyed to a depth of nine feet of water at the lowest stage of the tide, and subdivided into lots of not more than twenty acres or into lots of not less than fifty feet front by one hundred feet deep, as in the judgment of said tide-land commissioners, approved by the state board, may seem fit for the best interests of the state; and the commissioners shall locate, declare, lay down, and establish a canal six hundred feet in width, along and adjoining the southern boundary line of the city and county of San Francisco, extending from the shore line of the bay of San Francisco to ships' channel, in said bay; also a canal of like width extending from the mouth of Guadalupe creek, in the county of San Mateo, in a due east course to the ships' channel; and said commissioners shall have power to locate and establish canals and basins upon the marsh and tide lands lying outside of the exterior boundaries of the county of San Francisco, mentioned in section one of this act, whenever they deem them necessary for the purposes of drainage, navigation, and the wants of commerce; and shall cause to be prepared the necessary maps, exhibiting the property as surveyed, the number, area, and location of each subdivision or lot, and all other matters proper and necessary to be shown thereon. The commissioners shall file certified copies of said maps with the surveyor-general of the state and with the recorder of the city and county of San Francisco, retaining the original field-notes and maps of said survey in their office at San Francisco.

Sale of lands.

SEC. 3. After the commissioners shall have complied with the provisions of section two they shall proceed to sell at public auction, to the highest bidder, on the following terms: Cash, in gold coin, twenty-five per cent payable on the day of sale to the commissioners; and seventy-five per cent payable twenty-five per cent in one year, twenty-five per cent in two years, and twenty-five per cent in three years thereafter, to the state treasurer at Sacramento. The commissioners shall receipt to each purchaser for the amount of his payment of twenty-five per cent, stipulating that if the remaining seventy-five per cent of the purchase money shall be paid in three equal parts—in one, two, and three years thereafter, together with legal interest, to the state treasurer at Sacramento, he shall receive a deed from the state of California for the property purchased by him. Such sale shall be by lots, in accordance with the maps provided for in section two of this act, and on the same terms as provided for in the sale of salt-marsh and tide lands, in the act of which this is amendatory and supplementary to; and the commissioners shall appoint proper and competent auctioneers to sell said lands, and their compensation shall be one per cent on the gross amount of sales of all lands outside of the exterior boundaries of said city and county of San Francisco, and one half of one per cent on the gross amount of sales of all lands within the boundaries of said city and county of San Francisco, and such sales shall be made in some public place in the city and county aforesaid.

State board.

SEC. 4. The state board, under this act, shall consist of the governor of the state, surveyor-general of the state, and the controller of state, who shall have power to make all rules for the sales; and before such sales shall be deemed complete shall be approved by said state board. Such approvals to be made within sixty days after the report of such sales be filed with the state board.

Commissioners may compromise.

SEC. 5. The commissioners, or a majority of them, shall have the power to compromise with any adverse claimants to any portion or portions of lands mentioned in this act, whenever and on such terms as they may deem it most conducive to the interests of the state; all such compromises to be approved by and with the consent of the state board, and by the advice of the attorney-general of the state; provided, that all such compromises shall be made and in all respects completed, and the money paid, within eighteen months from the passage of this act, and not afterwards.

Expenses.

SEC. 6. All salaries, bills, and accounts for expenses incurred in enforcing this act shall be approved by the state board; after they shall have been approved, the secretary of the commissioners shall certify the approval of the same to the controller of state, who thereupon shall draw his warrants upon the general fund for the separate amounts of such salaries, bills, or accounts in favor of the parties to whom it is due. The secretary of the board of tide-land commissioners shall receive, as compensation for his services as secretary of said board, the sum of two hundred dollars per month, payable out of the general fund.

Costs of deeds.

SEC. 7. The costs and expenses of all deeds required to be made under the provisions of this act, for the conveyance of such lands purchased by any persons, shall be paid by the purchasers at such sales, not to exceed five dollars for each and every conveyance so required to be made by said commissioners.

SEC. 8. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 9. This act shall take effect and be in force from and after its passage.

An act supplementary to and amendatory of an act supplementary to and amendatory of an act entitled "An act to survey and dispose of certain salt-marsh and tide lands belonging to the state of California," approved March 30, 1868; also an act approved April 1, 1870; approved March 30, 1874; 1873–4, 858. This act was repealed by act of February 4, 1876; amendments 1875–6, 15; took effect from passage; and by the same act the state board of tide-land commissioners, whose duties and powers were prescribed by this act, was abolished. See, for the repealing act, Pol. Code, sec. 365.

State-land commission.—An act to provide for an examination into the sale and disposal of state lands, approved April 1, 1876; 1875–6, 798. This act is given in full, Pol. Code, sec. 3523.

In addition to the foregoing act, which is special for the salt-marsh and tide lands in, and within five miles of, the city and county of San Francisco, a number of other special and local acts have been passed in relation to public lands in other localities. It is deemed proper to give references to them as follows:

An act to provide for funding the indebtedness of the reclamation and levee districts of the state, approved March 30, 1872; 1871–2, 835; amended March 2, 1874; 1873–4, 237; amended and supplemented March 25, 1874; 1873–4, 585; amended and supplemented April 3, 1876; 1875–6, 888. By the last-mentioned acts of March 25, 1874, and April 3, 1876, the original act of March 30, 1872, which had been of general application, was restricted in its operation to levee district No. 5, in Sutter county, and repealed as to the other portions of the state.

An act directing the controller to advertise in a newspaper published in the county of Stanislaus, of the sale of certain lands, the title to which is vested in the state of California, from the estate of James M. Lewis, deceased, by escheat, and to sell said lands, approved January 29, 1874; 1873–4, 39.

An act to legalize the appointment of commissioners for swamp-land districts Nos. 50 and

54, in Sacramento county, and to validate certain acts of said commissioners, approved March 4, 1874; 1873–4, 273.

An act to define the boundary, provide for the care, strengthening, and repairing of the levee, and for the payment of the indebtedness of levee district No. 1 of Sutter county, approved March 20, 1874; 1873–4, 511.

An act to appropriate money for the expenses of the tide-land commission, approved March 24, 1874; 1873–4, 548.

An act to quiet the title to certain salt marsh and tide lands in Contra Costa county, approved March 25, 1874; 1873–4, 616.

An act relative to swamp-land district No. 118, in Contra Costa county, approved March 26, 1874; 1873–4, 689.

An act to extend the time in which swamp-land district No. 116, in Kern county, shall complete its work of reclamation, approved March 27, 1874; 1873–4, 721.

An act relating to the funds of swamp-land district No. 18, in Solano county, approved March 30, 1874; 1873–4, 759.

An act to quiet title to certain lands in township 7 north, range 5 west, approved March 30, 1874; 1873–4, 803.

An act to quiet title to certain land in the counties of Yolo and Colusa in the state of California, approved March 30, 1874; 1873–4, 818.

An act entitled "An act for the relief of John C. Burgess and Orrin Champlin as to lands in township 46 north, range 5 west," approved March 30, 1874; 1873–4, 819.

An act to provide for the payment of certain controller's warrants (drawn against funds of swamp-land districts numbered 1, 2, 5, and 18), approved March 30, 1874; 1873–4, 864.

An act in relation to the formation of a new swamp-land district (for Merrit island in Yolo county), approved March 30, 1874; 1873–4, 867.

An act to provide for the collection of delinquent reclamation assessments in Sacramento county, approved March 30, 1874; 1873–4, 885.

An act to legalize certain proceedings in reclamation district No. 124, approved March 30, 1874; 1873–4, 957.

An act to extend the time in which swamp-land district No. 125 shall complete its work of reclamation, approved February 29, 1876; 1875–6, 82.

An act relative to the assessment in swamp-land reclamation district No. 118, in Contra Costa county, approved March 6, 1876; 1875–6, 140.

An act to transfer the swamp-land fund of Del Norte county to the general fund of said county, approved March 7, 1876; 1875–6, 143.

An act to provide for funding the indebtedness of levee district No. 2 of Sutter county, approved March 9, 1876; 1875–6, 155.

An act to transfer the swamp-land fund of San Mateo county to the general fund of said county, approved March 11, 1876; 1875–6, 213.

An act concerning certain reclamation districts in San Joaquin county, approved March 14, 1876; 1875–6, 281.

An act to define the boundary and provide for the government of levee district No. 2 of Sutter county, approved March 23, 1876; 1875–6, 391.

An act for the payment of the claim of Laura De Force Gordon against swamp-land district No. 5, approved March 24, 1876; 1875–6, 460.

An act to authorize the controller and treasurer of state to transfer certain funds (from general fund to swamp-land fund), approved April 1, 1876; 1875–6, 723.

An act to confer on the board of trustees of swamp-land district No. 17, San Joaquin county, additional powers, approved April 3, 1876; 1875–6, 781.

An act relative to assessments in reclamation district No. 124, in Colusa county, approved April 1, 1876; 1875–6, 801.

LASSEN COUNTY.

References to special and local acts.—The act creating Lassen county, defining its boundaries, and providing for its organization, will be found, 1863–4, 264.

An act defining legal distances from county seat to state capital, lunatic asylum, and state prison, 1863–4, 476.

To levy taxes for county purposes, 1865–6, 53.

Boundaries defined, 1865–6, 453.

County judge and county court, 1865–6, 454.

Franchise to J. Morrill for wagon-road from Susanville, 1865–6, 585.

Act concerning jurors, 1867–8, 39.

To provide for payment of debt, 1867–8, 140.

Exempted from act incorporating canal companies, 1867–8, 137.

Fees and salaries, 1867–8, 448; 1869–70, 148.

To levy taxes for county purposes, 1867–8, 482.

Treasurer to pay W. Williams for erecting county buildings, 1869–70, 387.

Concerning roads and highways, 1869–70, 475.

Terms of district court, 1869–70, 576.

For protection of game, 1869–70, 853.

Concerning roads and highways, 1871–2, 65; 1873–4, 306.

Salary of district attorney, 1871–2, 189, 654.

To prevent hogs running at large in Susanville, 1871–2, 510.

In third congressional district, 1871–2, 714.

To levy special tax, 1871–2, 842.

Survey of northern boundary line, 1871–2, 886.

To legalize act of trustees of Susanville school district in borrowing money, 1873–4, 340.

In twenty-sixth senatorial district, 1873–4, 369.

Fixing amount of treasurer's bond, 1875–6, 154.

For distribution of school money, 1875–6, 332.

Concerning public roads, 1875–6, 539, 858.

Concerning hogs running at large, 1875–6, 797.

Concerning hogs running at large, 1877–8, 640.

Concerning public roads, 1877–8, 641.

Regulating fees of justices of the peace, 1877–8, 683.

For removing obstructions to salmon in Pitt river, 1880, 104 (Ban. ed. 343).

LIBRARIES AND READING-ROOMS.

An Act to establish free public libraries and reading-rooms.

[Approved April 26, 1880; 1880, 231 (Ban. ed. 524).]

Classification of cities for library purposes.

SECTION 1. For the purposes of this act, cities in this state are classified as follows:

1. Cities of less than one hundred thousand population.
2. Cities of more than one hundred thousand population.

Levy of tax.

SEC. 2. The municipal authorities of any incorporated city of this state are authorized and empowered, by a resolution duly passed for that purpose, to levy and collect, as in other cases, annually, a tax not to exceed one mill on the dollar for the purpose of establishing and maintaining in such city free public libraries and reading-rooms, and purchasing such books, journals, and other publications, purchasing and leasing such real and personal property, and erecting such buildings as may be necessary therefor.

Library fund.

SEC. 3. All money and revenue paid, collected, or received by authority of anything herein contained, whether by taxation, gift, devise, bequest, or otherwise, shall belong to and be known and designated as the "library fund," and shall be paid into the proper city treasury, and there kept separate and apart from other funds, and be drawn therefrom as hereinafter provided, but only to be used and applied to the purposes herein authorized.

Property, how vested.

SEC. 4. All property, real and personal, acquired by purchase, gift, devise, bequest, or otherwise, under the provisions of or for any purpose authorized by this act, shall vest, be, and remain in the proper city, and may be protected, defended, and sued for by action at law, or otherwise, in the name of such city as in other cases.

Trustees, how elected.

SEC. 5. In a city of less than one hundred thousand population, five trustees shall be elected at the same time and in the same manner as the other town officers are elected. They shall hold office the same length of time to carry into effect the provisions of this act.

Trustees, appointment of.

SEC. 6. In a city of more than one hundred thousand population the mayor or chief executive officer, during his continuance in office, and eleven citizens thereof, to be appointed by the governor of this state, shall constitute the first board of trustees of any library or reading-room established or acquired in such city under this act.

Office of trustee honorary.

SEC. 7. The office of trustee shall be honorary, without salary or other compensation, and shall continue during good behavior; but for good cause a trustee may be removed from office by proceedings in the superior court in behalf of the proper city in manner provided for the removal from office of other city officers.

Powers.

SEC. 8. The trustees of any library or reading-room established or acquired by authority of this act shall take charge of the same and of all real and per-

sonal property thereunto belonging, or that may be acquired by loan, purchase, gift, devise, or otherwise. They shall meet for business purposes on the first Tuesday of each month, and at such other times as they may appoint, at a place to be provided for the purpose, and a majority of all their number shall constitute a quorum for business. They may appoint one of their number to act as president of their board, and may elect a librarian. They shall also elect a secretary, who shall keep a full statement and account of all property, money receipts and expenditures, and a record and full minutes in writing of all their proceedings. The secretary may certify to such proceedings, or any part or portion thereof under his hand, verified by an official seal adopted and provided by the trustees for that purpose.

Further powers.

SEC. 9. Such trustees, by a majority vote of all their members, to be recorded in the minutes with the ayes and noes at length, shall have power:

1. To make and enforce all rules, regulations, and by-laws necessary for the administration, government, and protection of such library and reading-room, and all property belonging thereto, or that may be loaned, devised, bequeathed, or donated to the same.

2. To exercise and administer any trust declared or created for such library or reading-room, and to provide memorial tablets and niches to perpetuate the memories of those persons who may make valuable donations thereto.

3. To remove any trustee who may neglect to attend the meetings of the board of trustees, or who may absent himself from such meetings, or without the consent of the board from the state for three consecutive months; and to fill all vacancies that may from any cause occur in the board.

4. To define the powers and describe the duties of any and all officers, determine the number, and elect all necessary subordinate officers and assistants, and at their pleasure remove any officer or assistant.

5. To purchase necessary books, journals, publications, and other personal property.

6. To order the drawing and payment, upon properly authenticated vouchers, duly certified by the president and secretary, of money from out of the library fund for any liability or expenditure herein authorized; and generally to do all that may be necessary to fully carry into effect the provisions of this act.

7. To fix the salaries of the librarian, secretary, and other subordinate officers and assistants, and by and with the consent and approval of the legislative or other proper authority of the proper city, expressed by resolution duly passed, to purchase said real estate, erect and equip such buildings as may be necessary for such library and reading-room.

Demands, how audited and paid.

SEC. 10. The orders and demands of the trustees of any such library or reading-room of any city, when duly made and authenticated as above provided, shall be verified and audited by the auditing officer, and paid by the treasurer of such city out of the library fund properly belonging thereto, of which full entry and record shall be kept as in other cases.

Report.

SEC. 11. The trustees of such library or reading-room, on or before the first Monday of July of each year, shall make an annual report to the municipal authorities of their city, giving the condition of their trust, with full statements of all property and money received, whence derived, how used and

expended; the number of books, journals, and other publications on hand, the number added by purchase, gift, or otherwise, during each year, the number lost or missing, the number and character of those loaned, and such other statistics, information, and suggestions as may be of general interest. A financial report showing all receipts and disbursements of money shall also be made by the secretary of the board of trustees, duly verified by his oath.

Municipal authorities to pass ordinances for protection, etc., of library.

SEC. 12. The proper municipal authorities of any city wherein a public library or reading-room may be established shall have power to pass ordinances for the protection of the same and all property thereto belonging, and for imposing penalties for the punishment of persons committing injury to such library or reading-room, or the property or books thereof, or for failure to return any book or other property belonging thereto. They shall also have power, by a resolution duly passed for such purpose, to grant, donate, or authorize the use of, either in whole or in part, any land, square, or real estate belonging to such city or town, or dedicated to public use therein, for the purpose of erecting and maintaining a building to be used only for a public library and reading-room as herein authorized.

"City" or "cities" defined.

SEC. 13. The words "city" or "cities," wherever used in this act, are intended to and shall include all incorporated cities and towns, and cities and counties with consolidated government, and shall be construed accordingly.

Repeal—Transfer of property.

SEC. 14. An act entitled "An act to establish and maintain free public libraries and reading-rooms," approved March the eighteenth, eighteen hundred and seventy-eight, is hereby repealed. All libraries and reading-rooms heretofore established by authority of the last-mentioned act in any city or town, or city and county, and all property, real and personal, thereto belonging, shall be turned over to the charge, custody, and administration of such trustees as may be continued or appointed therein respectively under the provisions of this act, with like powers and liabilities as if such library had been established under this act.

SEC. 15. This act shall take effect on the first day of May, A. D. eighteen hundred and eighty.

As to supreme court library and San Francisco law library, see Pol. Code, sec. 2313.

LIQUOR.

In addition to the provisions of the Penal Code in relation to the sale of liquors, secs. 299–307, several statutes are in force, as follows:

An act to prevent the sale of intoxicating drinks to minors, approved March 4, 1872; 1871–2, 231. Given, Pen. Code, sec. 307.

An act to prohibit the sale of intoxicating liquors within two miles of the university of California, approved December 23, 1873; 1873–4, 12. Given, Pol. Code, sec. 1405.

An act to prohibit the sale of intoxicating liquors within a certain distance of the Napa state asylum for the insane, approved January 15, 1874; 1873–4, 27. Given, Pol. Code, sec. 2222.

An act to prevent the sale of intoxicating beverages on election days, approved March 7, 1874; 1873–4, 297. Given, Pol. Code, sec. 1073.

An act to permit the voters of every township or incorporated city in this state to vote on the question of granting licenses to sell intoxicating liquors, approved March 18, 1874; 1873–4, 434. This act, commonly known as the "local-option law," was pronounced unconstitutional by the supreme court in the case of *Ex parte Wall*, 48 Cal. 279. It was expressly repealed by act of January 27, 1876; 1875–6, 10.

An Act to prohibit the collection of accounts for liquors sold at retail.

[Approved March 20, 1874; 1873–4, 509.]

Retail liquor account of over five dollars an invalid consideration.

SECTION 1. The purchase of, or the sale and delivery of, any spirituous or malt liquors, wine, or cider, by retail or by the drink, is hereby declared to be

an invalid consideration for any promise to pay, or assumpsit of account therefor, when the amount of such account or demand exceeds five dollars.

Judgment.

SEC. 2. No court shall, in any action at law, render judgment for a greater amount than five dollars for the sale at retail, or by the drink, of any spirituous or malt liquors, wine, or cider, together with costs.

An act to prohibit the sale of intoxicating liquors within one mile of College City, Colusa county, state of California, approved April 1, 1876; 1875–6, 691. This act makes it a misdemeanor to keep or expose for sale, sell, give, or permit others to take for a consideration, any malt or spirituous liquors within a mile of the south-east corner of the college plat.

An act relating to the intoxication of officers, approved April 15, 1880; 1880, 77 (Ban. ed. 265). This act is given in full: See Pen. Code, sec. 177.

An Act to prohibit the sale of intoxicating liquors in the state capitol building.

[Approved April 16, 1880; 1880, 80 (Ban. ed. 273).]

Prohibiting the sale of liquors in state capitol building.

SECTION 1. Any person or persons having in charge or control the state capitol building, and allowing the same, or any portion thereof, to be used for the sale or distribution in any manner, for profit, of any malt or spirituous liquors, shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than one thousand dollars.

SEC. 2. This act shall take effect immediately after its passage.

An act to prohibit the sale of intoxicating liquors within two miles of the university of California, approved December 23, 1873; 1873–4, 12. See text of act, Pol. Code, sec. 1405.

LOGS.

An Act to establish a scale for the measurement of logs.

[Approved March 28, 1878; 1877–8, 604.]

One standard of measurement.

SECTION 1. There shall be but one standard for the measurement of logs throughout this state.

Standard for measurement of logs.

SEC. 2. The following table, known as Spaulding's Table for the Measurement of Logs, is hereby made the standard and table for the measurement of logs throughout this state, to wit:

TABLE.

Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet
12	10	38	12	24	309	12	38	798	12	52	1,519	12	66	2,467	12	80	3,634
12	11	47	12	25	337	12	39	843	12	53	1,578	12	67	2,545	12	81	3,779
12	12	58	12	26	366	12	40	889	12	54	1,638	12	68	2,625	12	82	3,874
12	13	71	12	27	396	12	41	936	12	55	1,700	12	69	2,706	12	83	3,970
12	14	86	12	28	427	12	42	984	12	56	1,763	12	70	2,789	12	84	4,067
12	15	103	12	29	459	12	43	1,033	12	57	1,827	12	71	2,874	12	85	4,165
12	16	121	12	30	492	12	44	1,086	12	58	1,893	12	72	2,960	12	86	4,264
12	17	141	12	31	526	12	45	1,134	12	59	1,960	12	73	3,047	12	87	4,364
12	18	162	12	32	561	12	46	1,186	12	60	2,028	12	74	3,135	12	88	4,465
12	19	184	12	33	597	12	47	1,239	12	61	2,098	12	75	3,224	12	89	4,566
12	20	207	12	34	634	12	48	1,293	12	62	2,169	12	76	3,314	12	90	4,668
12	21	231	12	35	673	12	49	1,348	12	63	2,241	12	77	3,405	12	91	4,771
12	22	256	12	36	713	12	50	1,404	12	64	2,315	12	78	3,497	12	92	4,875
12	23	282	12	37	755	12	51	1,461	12	65	2,390	12	79	3,590	12	93	4,980

Length—feet.	Diameter—inches.	Contents—feet.	Length—feet.	Diameter—inches.	Contents—feet.	Length—feet.	Diameter—inches.	Contents—feet.	Length—feet.	Diameter—inches.	Contents—feet.	Length—feet.	Diameter—inches.	Contents—feet.	Length—feet.	Diameter—inches.	Contents—feet.
12	94	5,085	13	73	3,301	14	52	1,772	15	31	657	16	10	50	16	76	4,418
12	95	5,192	13	74	3,396	14	53	1,841	15	32	701	16	11	63	16	77	4,540
12	96	5,300	13	75	3,492	14	54	1,911	15	33	746	16	12	77	16	78	4,663
13	10	41	13	76	3,590	14	55	1,983	15	34	792	16	13	94	16	79	4,786
13	11	51	13	77	3,688	14	56	2,056	15	35	841	16	14	114	16	80	4,912
13	12	62	13	78	3,788	14	57	2,131	15	36	891	16	15	137	16	81	5,038
13	13	76	13	79	3,889	14	58	2,208	15	37	943	16	16	161	16	82	5,165
13	14	93	13	80	3,991	14	59	2,286	15	38	997	16	17	188	16	83	5,293
13	15	111	13	81	4,094	14	60	2,366	15	39	1,053	16	18	216	16	84	5,423
13	16	131	13	82	4,196	14	61	2,447	15	40	1,111	16	19	245	16	85	5,553
13	17	152	13	83	4,301	14	62	2,530	15	41	1,170	16	20	276	16	86	5,685
13	18	175	13	84	4,406	14	63	2,614	15	42	1,230	16	21	308	16	87	5,818
13	19	199	13	85	4,512	14	64	2,700	15	43	1,291	16	22	341	16	88	5,953
13	20	224	13	86	4,619	14	65	2,789	15	44	1,357	16	23	376	16	89	6,088
13	21	250	13	87	4,727	14	66	2,878	15	45	1,417	16	24	412	16	90	6,224
13	22	277	13	88	4,837	14	67	2,969	15	46	1,482	16	25	449	16	91	6,361
13	23	305	13	89	4,946	14	68	3,062	15	47	1,548	16	26	488	16	92	6,500
13	24	334	13	90	5,057	14	69	3,157	15	48	1,616	16	27	528	16	93	6,640
13	25	365	13	91	5,168	14	70	3,253	15	49	1,685	16	28	569	16	94	6,780
13	26	396	13	92	5,281	14	71	3,353	15	50	1,755	16	29	612	16	95	6,922
13	27	429	13	93	5,395	14	72	3,453	15	51	1,826	16	30	656	16	96	7,066
13	28	462	13	94	5,508	14	73	3,555	15	52	1,898	16	31	701	17	10	53
13	29	497	13	95	5,624	14	74	3,657	15	53	1,972	16	32	748	17	11	67
13	30	533	13	96	5,741	14	75	3,761	15	54	2,047	16	33	796	17	12	82
13	31	569	14	10	44	14	76	3,866	15	55	2,125	16	34	845	17	13	100
13	32	607	14	11	55	14	77	3,972	15	56	2,203	16	35	897	17	14	121
13	33	646	14	12	67	14	78	4,080	15	57	2,283	16	36	950	17	15	145
13	34	686	14	13	82	14	79	4,188	15	58	2,366	16	37	1,006	17	16	171
13	35	729	14	14	100	14	80	4,298	15	59	2,450	16	38	1,064	17	17	199
13	36	772	14	15	120	14	81	4,408	15	60	2,535	16	39	1,124	17	18	229
13	37	817	14	16	141	14	82	4,519	15	61	2,622	16	40	1,185	17	19	260
13	38	864	14	17	164	14	83	4,631	15	62	2,711	16	41	1,248	17	20	293
13	39	913	14	18	189	14	84	4,745	15	63	2,801	16	42	1,312	17	21	327
13	40	963	14	19	214	14	85	4,859	15	64	2,893	16	43	1,377	17	22	362
13	41	1,014	14	20	241	14	86	4,974	15	65	2,987	16	44	1,448	17	23	399
13	42	1,066	14	21	269	14	87	5,091	15	66	3,083	16	45	1,512	17	24	437
13	43	1,119	14	22	298	14	88	5,209	15	67	3,181	16	46	1,581	17	25	477
13	44	1,176	14	23	329	14	89	5,327	15	68	3,281	16	47	1,652	17	26	518
13	45	1,228	14	24	360	14	90	5,446	15	69	3,382	16	48	1,724	17	27	561
13	46	1,284	14	25	393	14	91	5,566	15	70	3,486	16	49	1,797	17	28	604
13	47	1,342	14	26	427	14	92	5,687	15	71	3,592	16	50	1,872	17	29	650
13	48	1,400	14	27	462	14	93	5,810	15	72	3,700	16	51	1,948	17	30	697
13	49	1,460	14	28	498	14	94	5,932	15	73	3,809	16	52	2,025	17	31	745
13	50	1,521	14	29	535	14	95	6,057	15	74	3,919	16	53	2,104	17	32	794
13	51	1,582	14	30	574	14	96	6,183	15	75	4,030	16	54	2,184	17	33	845
13	52	1,645	14	31	613	15	10	47	15	76	4,142	16	55	2,266	17	34	898
13	53	1,709	14	32	654	15	11	59	15	77	4,256	16	56	2,350	17	35	953
13	54	1,774	14	33	696	15	12	72	15	78	4,371	16	57	2,436	17	36	1,010
13	55	1,841	14	34	739	15	13	88	15	79	4,487	16	58	2,524	17	37	1,069
13	56	1,909	14	35	785	15	14	107	15	80	4,605	16	59	2,613	17	38	1,130
13	57	1,979	14	36	831	15	15	128	15	81	4,723	16	60	2,704	17	39	1,194
13	58	2,050	14	37	880	15	16	151	15	82	4,842	16	61	2,797	17	40	1,259
13	59	2,123	14	38	931	15	17	176	15	83	4,962	16	62	2,892	17	41	1,326
13	60	2,197	14	39	983	15	18	202	15	84	5,084	16	63	2,988	17	42	1,394
13	61	2,272	14	40	1,037	15	19	230	15	85	5,206	16	64	3,086	17	43	1,463
13	62	2,349	14	41	1,092	15	20	258	15	86	5,330	16	65	3,186	17	44	1,538
13	63	2,427	14	42	1,148	15	21	288	15	87	5,455	16	66	3,289	17	45	1,606
13	64	2,507	14	43	1,205	15	22	320	15	88	5,581	16	67	3,393	17	46	1,680
13	65	2,589	14	44	1,267	15	23	352	15	89	5,707	16	68	3,500	17	47	1,755
13	66	2,672	14	45	1,323	15	24	387	15	90	5,835	16	69	3,608	17	48	1,831
13	67	2,757	14	46	1,383	15	25	421	15	91	5,964	16	70	3,718	17	49	1,909
13	68	2,843	14	47	1,445	15	26	457	15	92	6,094	16	71	3,832	17	50	1,989
13	69	2,931	14	48	1,508	15	27	495	15	93	6,225	16	72	3,946	17	51	2,069
13	70	3,021	14	49	1,572	15	28	533	15	94	6,356	16	73	4,062	17	52	2,151
13	71	3,113	14	50	1,638	15	29	573	15	95	6,490	16	74	4,180	17	53	2,235
13	72	3,206	14	51	1,704	15	30	615	15	96	6,625	16	75	4,298	17	54	2,320

Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet
17	55	2,408	18	34	951	19	13	112	19	79	5,684	20	58	3,155	21	37	1,321
17	56	2,497	18	35	1,009	19	14	136	19	80	5,833	20	59	3,266	21	38	1,397
17	57	2,588	18	36	1,069	19	15	163	19	81	5,983	20	60	3,380	21	39	1,475
17	58	2,681	18	37	1,132	19	16	191	19	82	6,133	20	61	3,496	21	40	1,555
17	59	2,776	18	38	1,197	19	17	223	19	83	6,285	20	62	3,615	21	41	1,638
17	60	2,873	18	39	1,264	19	18	256	19	84	6,440	20	63	3,735	21	42	1,722
17	61	2,972	18	40	1,333	19	19	291	19	85	6,594	20	64	3,858	21	43	1,807
17	62	3,072	18	41	1,404	19	20	327	19	86	6,751	20	65	3,983	21	44	1,900
17	63	3,174	18	42	1,476	19	21	365	19	87	6,909	20	66	4,111	21	45	1,984
17	64	3,279	18	43	1,549	19	22	405	19	88	7,069	20	67	4,241	21	46	2,075
17	65	3,385	18	44	1,629	19	23	446	19	89	7,229	20	68	4,375	21	47	2,168
17	66	3,494	18	45	1,701	19	24	489	19	90	7,391	20	69	4,510	21	48	2,262
17	67	3,605	18	46	1,779	19	25	533	19	91	7,554	20	70	4,648	21	49	2,385
17	68	3,718	18	47	1,858	19	26	579	19	92	7,719	20	71	4,790	21	50	2,457
17	69	3,833	18	48	1,939	19	27	627	19	93	7,885	20	72	4,933	21	51	2,556
17	70	3,951	18	49	2,022	19	28	676	19	94	8,051	20	73	5,078	21	52	2,657
17	71	4,071	18	50	2,106	19	29	726	19	95	8,220	20	74	5,225	21	53	2,761
17	72	4,193	18	51	2,191	19	30	779	19	96	8,391	20	75	5,372	21	54	2,866
17	73	4,316	18	52	2,278	19	31	832	20	10	63	20	76	5,522	21	55	2,974
17	74	4,441	18	53	2,367	19	32	888	20	11	78	20	77	5,675	21	56	3,085
17	75	4,567	18	54	2,457	19	33	945	20	12	96	20	78	5,829	21	57	3,197
17	76	4,694	18	55	2,550	19	34	1,003	20	13	118	20	79	5,983	21	58	3,312
17	77	4,823	18	56	2,644	19	35	1,065	20	14	143	20	80	6,140	21	59	3,429
17	78	4,954	18	57	2,740	19	36	1,128	20	15	171	20	81	6,298	21	60	3,549
17	79	5,085	18	58	2,839	19	37	1,195	20	16	207	20	82	6,456	21	61	3,671
17	80	5,219	18	59	2,940	19	38	1,263	20	17	235	20	83	6,616	21	62	3,795
17	81	5,353	18	60	3,042	19	39	1,334	20	18	270	20	84	6,778	21	63	3,921
17	82	5,488	18	61	3,147	19	40	1 407	20	19	306	20	85	6,941	21	64	4,051
17	83	5,624	18	62	3,253	19	41	1,482	20	20	345	20	86	7,106	21	65	4,182
17	84	5,762	18	63	3,361	19	42	1,558	20	21	385	20	87	7,273	21	66	4,316
17	85	5,900	18	64	3,472	19	43	1,635	20	22	426	20	88	7,441	21	67	4,453
17	86	6,040	18	65	3,585	19	44	1,719	20	23	470	20	89	7,610	21	68	4,593
17	87	6,182	18	66	3,700	19	45	1,795	20	24	515	20	90	7,780	21	69	4,735
17	88	6,325	18	67	3,817	19	46	1,877	20	25	561	20	91	7,951	21	70	4,880
17	89	6,468	18	68	3,937	19	47	1,961	20	26	610	20	92	8,125	21	71	5,029
17	90	6,613	18	69	4,059	19	48	2,047	20	27	660	20	93	8,300	21	72	5,180
17	91	6,759	18	70	4,183	19	49	2,134	20	28	711	20	94	8,475	22	10	69
17	92	6,906	18	71	4,311	19	50	2,223	20	29	765	20	95	8,653	22	11	86
17	93	7,055	18	72	4,440	19	51	2,313	20	30	820	20	96	8,833	22	12	106
17	94	7,203	18	73	4,570	19	52	2,405	20	31	876	21	10	66	22	13	130
17	95	7,355	18	74	4,702	19	53	2,498	20	32	935	21	11	82	22	14	157
17	96	7,508	18	75	4,836	19	54	2,593	20	33	995	21	12	101	22	15	188
18	10	57	18	76	4,970	19	55	2,691	20	34	1,056	21	13	124	22	16	221
18	11	70	18	77	5,107	19	56	2,791	20	35	1,121	21	14	150	22	17	258
18	12	87	18	78	5,245	19	57	2,892	20	36	1,188	21	15	180	22	18	297
18	13	106	18	79	5,385	19	58	2,997	20	37	1,258	21	16	211	22	19	337
18	14	129	18	80	5,526	19	59	3,103	20	38	1,330	21	17	246	22	20	379
18	15	154	18	81	5,668	19	60	3,211	20	39	1,405	21	18	283	22	21	423
18	16	181	18	82	5,811	19	61	3,321	20	40	1,481	21	19	322	22	22	469
18	17	211	18	83	5,955	19	62	3,434	20	41	1,560	21	20	362	22	23	517
18	18	243	18	84	6,101	19	63	3,548	20	42	1,640	21	21	404	22	24	566
18	19	276	18	85	6,247	19	64	3,665	20	43	1,721	21	22	448	22	25	617
18	20	310	18	86	6,396	19	65	3,784	20	44	1,810	21	23	493	22	26	671
18	21	346	18	87	6,546	19	66	3,906	20	45	1,890	21	24	540	22	27	726
18	22	384	18	88	6,697	19	67	4,029	20	46	1,976	21	25	589	22	28	782
18	23	423	18	89	6,849	19	68	4,156	20	47	2,065	21	26	640	22	29	841
18	24	463	18	90	7,002	19	69	4,284	20	48	2,155	21	27	693	22	30	902
18	25	505	18	91	7,156	19	70	4,415	20	49	2,246	21	28	747	22	31	964
18	26	549	18	92	7,312	19	71	4,550	20	50	2,340	21	29	803	22	32	1,028
18	27	594	18	93	7,470	19	72	4,686	20	51	2,435	21	30	861	22	33	1,094
18	28	640	18	94	7,627	19	73	4,824	20	52	2,531	21	31	920	22	34	1,162
18	29	688	18	95	7,788	19	74	4,964	20	53	2,630	21	32	981	22	35	1,233
18	30	738	18	96	7,950	19	75	5,104	20	54	2,730	21	33	1,044	22	36	1,307
18	31	789	19	10	60	19	76	5,246	20	55	2,833	21	34	1,109	22	37	1,384
18	32	841	19	11	74	19	77	5,391	20	56	2,938	21	35	1,177	22	38	1,463
18	33	895	19	12	91	19	78	5,537	20	57	3,045	21	36	1,247	22	39	1,545

Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet	Length—feet	Diameter—inches	Contents—feet
22	40	1,629	22	67	4,665	23	31	1,008	23	58	3,628	24	21	462	24	47	2,478
22	41	1,716	22	68	4,812	23	32	1,075	23	59	3,756	24	22	512	24	48	2,586
22	42	1,804	22	69	4,961	23	33	1,144	23	60	3,887	24	23	564	24	49	2,696
22	43	1,893	22	70	5,113	23	34	1,215	23	61	4,021	24	24	618	24	50	2,808
22	44	1,991	22	71	5,269	23	35	1,289	23	62	4,157	24	25	674	24	51	2,922
22	45	2,079	22	72	5,426	23	36	1,366	23	63	4,295	24	26	732	24	52	3,038
22	46	2,174	23	10	72	23	37	1,447	23	64	4,437	24	27	792	24	53	3,156
22	47	2,271	23	11	90	23	38	1,529	23	65	4,580	24	28	854	24	54	3,276
22	48	2,370	23	12	111	23	39	1,615	23	66	4,728	24	29	918	24	55	3,400
22	49	2,470	23	13	136	23	40	1,703	23	67	4,877	24	30	984	24	56	3,526
22	50	2,574	23	14	164	23	41	1,794	23	68	5,031	24	31	1,052	24	57	3,654
22	51	2,678	23	15	197	23	42	1,886	23	69	5,186	24	32	1,122	24	58	3,786
22	52	2,784	23	16	231	23	43	1,979	23	70	5,345	24	33	1,194	24	59	3,920
22	53	2,893	23	17	270	23	44	2,081	23	71	5,508	24	34	1,268	24	60	4,056
22	54	3,003	23	18	310	23	45	2,173	23	72	5,673	24	35	1,346	24	61	4,196
22	55	3,116	23	19	352	23	46	2,273	24	10	76	24	36	1,426	24	62	4,338
22	56	3,232	23	20	396	23	47	2,374	24	11	94	24	37	1,510	24	63	4,482
22	57	3,349	23	21	442	23	48	2,478	24	12	116	24	38	1,596	24	64	4,630
22	58	3,470	23	22	490	23	49	2,582	24	13	142	24	39	1,686	24	65	4,780
22	59	3,592	23	23	540	23	50	2,691	24	14	172	24	40	1,778	24	66	4,934
22	60	3,718	23	24	592	23	51	2,800	24	15	206	24	41	1,872	24	67	5,090
22	61	3,846	23	25	645	23	52	2,911	24	16	242	24	42	1,968	24	68	5,250
22	62	3,976	23	26	701	23	53	3,024	24	17	282	24	43	2,066	24	69	5,412
22	63	4,108	23	27	759	23	54	3,139	24	18	324	24	44	2,172	24	70	5,578
22	64	4,244	23	28	818	23	55	3,258	24	19	368	24	45	2,268	24	71	5,748
22	65	4,381	23	29	879	23	56	3,379	24	20	414	24	46	2,372	24	72	5,920
22	66	4,522	23	30	943	23	57	3,501	..	..	.....	..	..	.....	..	..	.....

Logs of greater length.

SEC. 3. For the measurement of logs of any greater length than indicated in the table set forth in section two of this act, the computation shall be made in accordance with table.

Logs, how measured.

SEC. 4. All logs shall be measured at the small end and inside the bark, and the contents computed according to section two of this act. [*Amendment, approved April* 16, 1880; 1880, 119 (*Ban. ed.* 384); *took effect from passage.*]

Allowance made for rot or defect.

SEC. 5. Allowance shall be made for rot, shake, or other defect in logs measured by this scale and under the provisions of this act, so as to make the survey express the actual quantity of merchantable lumber in each log.

SEC. 6. This act shall take effect immediately.

An act giving a lien to loggers and laborers, employed in logging-camps, upon the logs cut and hauled by the persons who employ them, approved March 30, 1878; 1877-8, 747. This act is given in full, Code Civ. Proc., sec. 1183.

An act for the scaling of logs in the county of Humboldt, approved March 30, 1878; 1877-8, 779. This act provided for the appointment, by the board of supervisors of Humboldt county, of three or more surveyors of logs in that county; who were to survey and measure logs according to a system indicated in the act.

LOS ANGELES COUNTY.

References to special and local acts.—Boundaries, 1850, 59; 1851, 172; 1853, 119; 1856, 53.

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Concerning infant heirs of Anne E. Stockton, deceased, 1861, 572.
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Changing municipal election, 1867–8, 609.
Act concerning watercourses, 1869–70, 645.
To fund the city debt, 1869–70, 671.
To create board of water commissioners, 1869–70, 702; 1871–2, 30.
To ratify certain acts of mayor and common council, 1871–2, 93.
To amend charter, 1871–2, 128, 623; 1873–4, 633; 1875–6, 692.
To create board of education, 1871–2, 153.
Appropriation to Sisters of Mercy, 1871–2, 748.
For establishment of public library, 1873–4, 274.
To amend special school law, 1873–4, 605.
To authorize issue of bonds, 1873–4, 724.
To pay warrants drawn on salary fund, 1873–4, 763.
To pay indebtedness created by former board of water commissioners, 1875–6, 52.
To authorize issue of bonds for improvement of irrigation, 1875–6, 79.
For issue of bonds for building a main public sewer, 1875–6, 398.
Revising charter, 1875–6, 692.
Creating board of public works, 1875–6, 856.
For building a bridge across the Los Angeles river, 1875–6, 889.

MARIN COUNTY.

References to special and local acts.—Boundaries, 1850, 60; 1851, 177; 1854, 224; 1860, 269; 1861, 351; 1867–8, 347.
Seat of justice, 1850, 406; 1851, 178; 1863, 52.
Attaching county for judicial purposes to Sonoma county prior to organization, 1850, 60.
Concerning this and other unorganized counties, 1850, 406.

For relief of W. Reynolds, treasurer, 1851, 312.
Abolishing board of supervisors, 1854, 44.
Concerning collection of taxes now due, 1855, 34.
Authorizing board of supervisors to levy special tax for erection of public buildings, 1855, 103.
Prohibiting sale of ardent spirits within two miles of state prison, 1855, 108.
Providing for settling boundary line between this and Sonoma county, 1856, 34.
Extending time of collecting taxes, 1857, 30.
Authorizing board of supervisors to pay current expenses, 1857, 236.
To confirm and legalize tax list or assessment roll for fiscal year ending June 30, 1858, and to provide for collection of delinquent taxes, 1858, 13.
Granting privilege to C. Talcott to erect wharf at Point San Quentin and collect wharfage, 1858, 114.
Changing time of holding county court, 1859, 27.
Authorizing board of supervisors to levy special tax, 1859, 42.
Confirming and legalizing tax lists or assessment rolls for 1857 and 1858, and authorizing collection of unpaid taxes, 1859, 53.
In relation to trial jurors in court of sessions and county court, 1859, 159; 1862, 247.
Fixing terms of county court, probate court, and court of sessions, 1859, 225.
To provide for condemning or purchasing certain lands adjoining state prison ground at San Quentin for state prison purposes, 1859, 242; 1863, 224.
To condemn and appropriate to use of state interest of certain parties in state prison grounds, buildings, etc., and to appropriate money for payment, 1859, 374.
Extending time for collection of state and county taxes, 1860, 21.
Authorizing M. Buckelew and assigns to build wharf at Agnes Island, 1860, 58.
Declaring Arroyo de San Antonio, or Keyes creek, navigable, 1860, 126; 1873–4, 564.
Declaring Novato creek, or estuary, navigable, 1860, 257.
Concerning wild animals, 1861, 66.
Appropriating money to male orphan asylum, 1861, 89; 1862, 313.
For relief of Marin county, 1861, 121.
Concerning roads and highways, 1861, 378.
Declaring certain creeks navigable, 1861, 469.
To procure conveyance by J. Center to state of certain real and personal property at state prison, 1861, 506.
Authorizing W. Kohle and associates to establish and maintain steam ferry, 1863, 500.
Authorizing attorney-general to prosecute certain suits concerning certain lands near state prison, 1863, 573.
Fixing time of holding county court and probate court, 1863–4, 94.
Authorizing P. K. Austin and associates to construct and maintain turnpike from San Rafael to Point San Quentin, 1863–4, 119.
Enabling state to acquire title to certain grounds adjoining state prison grounds at Point San Quentin, 1863–4, 310.
Time of holding district court, 1865–6, 13.
Time of holding county and probate court, 1865–6, 56.
Road franchise to Beck school-house, 1865–6, 152.
Roads and highways, 1865–6, 381, 711; 1867–8, 84.
Hogs, penalty of constables in relation thereto, 1865–6, 323.
Trespass of animals on private property, 1865–6, 440.
To provide fund for erection of public buildings, 1865–6, 476.
Franchise for county road, 1865–6, 524.
Prevent destruction of fish, 1865–6, 637.
Laying out, altering, and vacating public roads, 1865–6, 711.
Relocating county seat, 1865–6, 867.
Office of public administrator, 1867–8, 27.
Mileage to grand and trial jurors, 1867–8, 41.
Boundaries, 1867–8, 347.
Delinquent school taxes and assessments, 1867–8, 371.
Fees and salaries, 1867–8, 448; 1869–70, 148.
For preservation of trout, 1867–8, 460.
Act concerning tax for roads and bridges, 1867–8, 610.
Roadmasters, and duties of, 1867–8, 619.
Franchise to P. K. Austin for turnpike, 1867–8, 646.
To issue and sell bonds to construct wagon-roads, 1869–70, 114; 1871–2, 23.
Act in relation to herding sheep, 1869–70, 314.
Administratrix of estate of H. Wilkins to sell real property, 1869–70, 406.
To protect agriculture and prevent trespass of animals, 1869–70, 410.
Supervisors to transfer certain bonds, 1869–70, 424.
To provide for official survey of swamp and overflowed lands, 1869–70, 428.
Providing for construction of public road, 1869–70, 501.
Act declaring creeks navigable, 1869–70, 663.
Ferry franchise between Marin county and San Francisco, 1869–70, 728.
Notaries public, 1869–70, 802.
To prevent hunting and shooting on private grounds, 1871–2, 304; 1873–4, 792.
To provide for building court-house and jail, 1871–2, 26, 308.
Concerning roads, 1871–2, 524.
Salary of district attorney, 1871–2, 653.
In third congressional district, 1871–2, 714.
Appropriation to boys' orphan asylum, 1871–2, 748.
As to herding of sheep, 1871–2, 890; 1873–4, 823.
Repealing special road laws, 1873–4, 5.
Incorporating town of San Rafael, 1873–4, 111.
Fixing salary of superintendent of public schools, 1873–4, 212.
Issue of bonds to pay indebtedness for road and bridge purposes, 1873–4, 299.
In relation to public schools, 1873–4, 339.
In fifteenth senatorial district, 1873–4, 368.
To fix compensation of certain officers, 1873–4, 433.
Concerning county records, 1873–4, 798.
In relation to suits for damages on account of laying out public roads, 1873–4, 815.
To protect agriculture, 1873–4, 845.
To provide for collection of road poll-taxes, 1875–6, 180.
To prevent stock from running at large upon roads and highways, 1875–6, 482.

Declaring Gallinas slough or creek navigable, 1875–6, 485.
For distribution of school moneys, 1875–6, 568.
Fixing terms of county and probate courts, 1875–6, 594.
For building workshops and prison buildings at the state prison, 1875–6, 643.
For relief of Julius Blume, 1877–8, 105.
Fixing amount of tax collector's bond, 1877–8, 196.
Levying of special tax for construction of wagon-road, 1877–8, 381.
For election of road overseers, 1877–8, 544.
To pay F. Kuhnle for arresting A. Ygera, 1877–8, 696.
Amending act incorporating town of San Rafael, 1877–8, 767.
For relief of James Saultry, 1883, 294.
For the purchase of jute manufactured at San Quentin, 1885, 53, 58.

MARIPOSA COUNTY.

References to special and local acts.—Boundaries, 1850, 63; 1851, 175; 1852, 240; 1855, 125; 1856, 183; 1861, 235; 1869–70, 449; 1871–2, 891; 1873–4, 100.
Seat of justice, 1850, 63; 1851, 176.
Extending time for acting treasurer to make returns, 1852, 187.
Creating Tulare county, 1852, 240.
To ascertain indebtedness, 1853, 61.
To fund debt and provide for payment, 1854, 248; 1855, 42; 1860, 260.
Creating Merced county, 1855, 125.
Authorizing board of supervisors to levy special tax for building fund, 1856, 21.
Granting sheriff additional time to make annual settlement for collection of taxes for 1855, 1856, 101.
Creating Fresno county, 1856, 183.
Fixing compensation of county judge, 1857, 256; 1860, 342; 1861, 350.
For relief of W. A. King, county treasurer, 1859, 332.
For relief of J. D. Crippen, sheriff, 1860, 49.
Authorizing collection of taxes, 1860, 158, 224.
Incorporating town of Hornitos, 1861, 118; 1867–8, 159; 1869–70, 471.
Creating Mono county, 1861, 235.
Authorizing district attorney to appoint deputies, 1862, 5; 1863, 95.
Concerning roads and highways, 1862, 193; 1863, 350; 1863–4, 151.
To fund indebtedness existing in form of county auditors' warrants drawn on indigent sick fund, outstanding on September 1, 1862, etc., 1862, 298.
Providing for construction of wagon and turnpike road by R. T. Brown and others, 1863, 12; 1863–4, 117.
Imposing further duties upon board of supervisors, 1863–4, 28.
Terms of district court in, 1865–6, 18; 1869–70, 792.
Roads and highways in, 1865–6, 18.
Additional tax for county expenditures, 1865–6, 36.
Indigent sick in, 1865–6, 49.
Protection of stock-raisers, 1865–6, 322.
To prevent stallions from running at large, 1865–6, 327; 1867–8, 70.
Appropriation for survey of big tree grove, 1865–6, 383, 711.
Repealing act imposing duties on supervisors, 1867–8, 2.
To levy additional taxes for county purposes, 1867–8, 55.
Roads and highways in, 1867–8, 154; 1869–70, 324.
Fees and salaries, 1867–8, 448; 1869–70, 148.
To be in thirteenth judicial district, 1867–8, 658.
To levy tax for county purposes, 1869–70, 8.
To prevent stallions running at large, 1867–8, 70; 1869–70, 68.
Concerning roads and highways, 1869–70, 334.
Act in relation to herding sheep, 1869–70, 304.
Boundaries, 1869–70, 449.
Terms of district court changed, 1869–70, 792.
Levy of additional tax for county purposes, 1871–2, 30.
To pay claim of R. B. Thomas, surveyor, 1871–2, 440.
Salary of district attorney, 1871–2, 654.
In fourth congressional district, 1871–2, 714.
As to herding of sheep, 1871–2, 890.
To define boundary line between Mariposa and Fresno counties, 1871–2, 891; 1873–4, 100.
To pay auditor and assessor, 1871–2, 899.
Regulating salaries of certain officers, 1873–4, 83.
Right of way for road over Yosemite grant, 1873–4, 106, 607; 1875–6, 303.
Compensation to Manuel de Silva and brother for maintaining ferry, 1873–4, 339.
Levy of additional tax for county purposes, 1873–4, 364.
In fifth senatorial district, 1873–4, 366.
To indemnify *bona fide* settlers on Yosemite grant, 1873–4, 523.
Fixing bond of treasurer, 1875–6, 17.
In relation to collection of licenses, 1875–6, 508.
To authorize supervisors to pay a certain claim, 1875–6, 508.
For maintenance and construction of roads and highways, 1875–6, 650.
To employ special counsel in certain murder cases, 1877–8, 1.
Extending time for publishing delinquent tax list, 1877–8, 64.
Amending act of March 31, 1876, concerning roads and highways, 1877–8, 277.
For improvement of Yosemite valley and Mariposa big tree grove, 1877–8, 929.
For management of Yosemite valley and Mariposa big tree grove, 1880, 44 (Ban. ed. 205).

MARKS AND BRANDS.

The general law in force in relation to marks and brands will be found in the Political Code, sec. 3167 et seq. As to one county, however, there is a special and local law, continued in force by the Political Code, sec. 19, subd. 11, which may be referred to in this place, as follows: An act concerning marks and brands in the county of Siskiyou, approved March 20, 1866; 1865–6, 332. It will be also found in the "Supplement to General Laws," sec. 8824.

MEDICINE.

An Act to regulate the practice of medicine in the state of California.

[Approved April 3, 1876; 1875–6, 792.]

Persons practicing medicine and surgery to present diploma to board.

SECTION 1. Every person in this state practicing medicine or surgery, in any of its departments, shall possess the qualifications required by this act. Every such person shall present his diploma to one of the boards of examiners herein named, together with the affidavit mentioned in section three (3) of this act. If the board shall find all the facts required to be stated in said affidavit to be true, the board of examiners shall issue its certificate to that effect, signed by all the members thereof, and sealed with the seal of the board, and such certificate shall be conclusive as to the right of the person named therein to practice medicine and surgery in any part of this state. [*Amendment, became a law and took effect April* 1, 1878; 1877–8, 918.]

Board of examiners appointed by what.

SEC. 2. The Medical Society of the State of California, the Eclectic Medical Society of the State of California, and the California State Homeopathic Medical Society, corporations organized and existing under and by virtue of the laws of this state, and no other corporation, society, persons, or person, shall appoint annually a board of examiners, consisting of seven members, who shall hold their office for one year and until their successors shall be chosen. The examiners so appointed shall go before a district or county judge and make oath that they are regular graduates, and that they will faithfully perform the duties of their office. Vacancies occurring in a board of examiners shall be filled by the society appointing it, by the selection of alternates, or otherwise. The board of examiners now organized, or existing under and by virtue of their appointments by the aforesaid societies, shall continue to act as such boards until their successors are appointed at the next annual election. [*Amendment, became a law and took effect April* 1, 1878; 1877–8, 918.]

Powers and duties of examiners.

SEC. 3. The board of examiners shall organize within three months after the passage of this act. They shall procure a seal, and shall receive, through their secretary, applications for certificates and examinations. The president of each board shall have authority to administer oaths, and the board take testimony in all meetings relating to their duties. They shall issue certificates to all who furnish satisfactory proof of having received diplomas or licenses from legally chartered medical institutions in good standing. They shall prepare two forms of certificates, one for persons in possession of diplomas or licenses, the other for candidates examined by the board. They shall furnish to the county clerks of the several counties a list of all persons receiving certificates. In selecting places to hold their meetings, they shall, as far as is reasonable, accommodate applicants residing in different sections of the state, and due notice shall be published of all their meetings. Certificates shall be signed by all the members of the board granting them, and shall indicate the medical society to which the examining board is attached.

Board to examine diplomas.

SEC. 4. Said board of examiners shall examine diplomas as to their genuineness, and if the diploma shall be found genuine, as represented, the secretary of the board of examiners shall receive a fee of five dollars from each graduate or licentiate, and no further charge shall be made to the applicant; but if it be

found to be fraudulent, or not lawfully owned by the possessor, the board shall be entitled to charge and collect twenty dollars of the applicant presenting such diploma. The applicant shall accompany his diploma with an affidavit stating that he is the lawful possessor of the same, that he is the person therein named, that the diploma was procured in the regular course of medical instruction, and without fraud or misrepresentation of any kind, and that the medical institution granting the diploma had, at the time of the granting the same, a full corps of medical instructors, and was at the said time a legally incorporated institution, actually and in good faith engaged in the business of medical education, and in good standing as a medical institution, and that the applicant had complied with all the requirements of said institution. Such affidavit may be taken before any person authorized to administer oaths, and the same shall be attested under the hand and official seal of such officer, if he have a seal. In addition to such affidavit, the board of examiners may hear such further testimony as in their discretion they may deem proper to hear, as to the verification of any such diploma, or as to the identity of the person named therein, or as to the manner in which any such diploma was procured, and if it should appear from such testimony that any fact stated in said affidavit is untrue, the application of such person for a certificate shall be rejected. None of said boards shall entertain an application which has been rejected by another of said boards, nor shall any rejected application be renewed until at least one year after the action of the board rejecting the same. [*Amendment, became a law and took effect April* 1, 1878; 1877–8, 918.]

Examination of applicants.

SEC. 5. All examinations of persons not graduates or licentiates shall be made directly by the board, and the certificates given by the boards shall authorize the possessor to practice medicine and surgery in the state of California; but no examination into the qualifications of persons not holding diplomas or licenses shall be made after the thirty-first day of December, eighteen hundred and seventy-six. After that date no certificates shall be granted by them, except to persons presenting diplomas or licenses from legally chartered medical institutions in good standing.

Certificates to be recorded.

SEC. 6. Every person holding a certificate from a board of examiners shall have it recorded in the office of the clerk of the county in which he resides, and the record shall be indorsed thereon. Any person removing to another county to practice shall procure an indorsement to that effect on the certificate from the county clerk, and shall record the certificate in like manner in the county to which he removes, and the holder of the certificate shall pay to the county clerk the usual fees for making the record.

Clerk to keep register.

SEC. 7. The county clerk shall keep, in a book provided for the purpose, a complete list of the certificates recorded by him, with the date of issue and the name of the medical society represented by the board of examiners issuing them. If the certificate be based on a diploma or license, he shall record the name of the medical institution conferring it, and the date when conferred. The register of the county clerk shall be open to public inspection during business hours.

Fees for examination.

SEC. 8. Candidates for examination shall pay a fee of five dollars in advance, which shall be returned to them if a certificate be refused. The fees received

by the board shall be paid into the treasury of the medical society by which the board shall have been appointed, and the expenses and compensation of the board shall be subject to arrangement with the society.

Examinations.

SEC. 9. Examinations may be in whole or in part in writing, and shall be of an elementary and practical character, but sufficiently strict to test the qualifications of the candidate as a practitioner.

Refusal of certificates for unprofessional conduct.

SEC. 10. The board of examiners must refuse certificates to individuals guilty of unprofessional conduct. But before any such refusal, the applicant must be cited by a citation signed by the secretary of the board, and sealed with its seal, to appear before the board at a time and place certain for the purpose of being heard as to such unprofessional conduct. Said citation shall notify the applicant of the time and place where and when the matter of said unprofessional conduct shall be heard, the particular unprofessional conduct with which the applicant is charged, and that the applicant shall then and there appear in person, and attended with such witnesses to testify on his behalf as he may desire, or default will be taken against him, and his application for a certificate refused. The attendance of witnesses at such hearing shall be compelled by subpœnas issued by the secretary of the board under its seal; and said secretary shall in no case refuse to issue any such subpœna on a fee of fifty cents being paid to him for each subpœna. Said citations and said subpœnas shall be served in accordance with existing provisions of law as to the service of citations and subpœnas generally. At such hearing witnesses shall be examined on the part of the board and on the part of the applicant as to the fact of the applicant having been guilty of the conduct set out in the citation, and either side may examine medical experts as to whether such conduct is unprofessional; and if it appear to the satisfaction of the board that the applicant is guilty of the said unprofessional conduct, no certificate shall be issued to him. But no application shall be refused on the ground of unprofessional conduct unless the applicant has been guilty of unprofessional conduct within one year next preceding his application. If any holder of a certificate be guilty of unprofessional conduct, his certificate must be revoked by the board granting it; but no such revocation shall be valid without said holder being cited to appear, and the same proceedings be had as is hereinbefore provided in this section in the case of refusal to grant a certificate. Whenever a certificate is revoked, the secretary of the board revoking the same shall certify the fact, under the seal of the board, to the county clerk of the county in which the person whose certificate has been revoked is at the time of said revocation practicing his profession, and said clerk shall thereupon write on the margin, or across the face of his register of the certificate of such person, the fact of such revocation, signing his name thereto, and shall file in his office said certificate of revocation. Each of said boards may, from time to time, adopt such rules as may be necessary to the orderly conduct of all proceedings taken and had before it. It shall be the duty of the secretary of the respective boards to notify the secretary of all other boards provided for under this act of all applicants to whom licenses may have been refused, together with the reasons of such refusal by such boards. [*Amendment, became a law and took effect April* 1, 1878; 1877–8, 919.]

Practice of medicine defined.

SEC. 11. Any person shall be regarded as practicing medicine, within the meaning of this act, who shall profess publicly to be a physician, or who shall

habitually prescribe for the sick, or who shall append to his name the letters "M. D."; but nothing herein contained shall be construed to prohibit gratuitous services in cases of emergency. And this act, and the act to which this act is supplemental and amendatory, shall not apply to lawfully commissioned surgeons of the United States army or navy practicing their profession within the limits of this state. [*Amendment, became a law and took effect April* 1, 1878; 1877–8, 919.]

License imposed on certain persons.

SEC. 12. Any itinerant vender who shall sell, or offer for sale, any drug, nostrum, ointment, or appliance of any kind intended for the treatment of disease or injury, or any person who shall, by writing or printing, or by any other method, publicly profess to cure or treat disease, injury, or deformity by any medicine, drug, or drugs, nostrum, manipulation, or other expedient, shall pay a license of one hundred dollars a month. Such license shall be collected as other licenses are. [*Amendment, became a law and took effect April* 1, 1878; 1877–8, 919.]

Penalties for violation.

SEC. 13. Any person practicing medicine or surgery in this state without complying with the provisions of this act shall be punished by a fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500), or by imprisonment in the county jail for a period of not less than thirty days nor more than three hundred and sixty-five days, or by both such fine and imprisonment, for each and every offense. And any person filing, or attempting to file, as his own, the diploma or certificate of another, or a forged affidavit of identification, shall be guilty of a felony, and upon conviction shall be subject to such fine and imprisonment as are made and provided by the statutes of this state for the crime of forgery.

SEC. 14. This act shall take effect from and after its passage, but the penalties shall not be enforced till on and after the thirty-first day of December, eighteen hundred and seventy-six.

An Act supplemental to and amendatory of an act entitled "An act to regulate the practice of medicine in the state of California," approved April 3, 1876.

[Became a law and took effect April 1, 1878; 1877–8, 918.]

The first six sections consist of the amendment to sections 1, 2, 4, 10, 11, and 12 of the act named in the title, and above given. The following are supplemental sections:

Misdemeanor.

SEC. 7. Any person practicing medicine or surgery in this state without first having procured a certificate to so practice from one of the boards of examiners appointed by one of the societies mentioned in section two of this act shall be deemed guilty of a misdemeanor, and shall be subject to the penalties provided in section thirteen of the act to which this act is amendatory and supplemental, but no person who holds a certificate from one of such boards of examiners, or who holds a certificate heretofore granted by the board of examiners heretofore existing by virtue of appointment by the California State Medical Society of Homeopathic Practitioners, shall be compelled to procure a new certificate. And all powers and privileges of said boards of examiners, under the act to which this act is supplemental and amendatory, are hereby transferred to the boards of examiners created by this act.

Misdemeanor.

SEC. 8. Any person assuming to act as a member of a board of examiners, under this act or under the act to which this act is supplemental and amenda-

tory, or who shall sign, or subscribe, or issue, or cause to be issued, or seal, or caused to be sealed, a certificate authorizing any person to practice medicine or surgery in this state, except the person so acting and doing be appointed by one of the societies mentioned in section two of this act, or be authorized so to do by a board of examiners appointed by one of said societies, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars, or by imprisonment in the county jail for a period of not less than thirty nor more than three hundred and sixty-five days, or by both such fine and imprisonment.

Certain certificates made null.

SEC. 9. Should either of the said boards issue a certificate to any person whose application for a certificate has been previously rejected by another of the said boards within one year after the rejection of said application, then in such case the certificate issued as aforesaid to said rejected applicant shall be null and void and of no effect.

Examination of applicants to practice medicine.

SEC. 10. If any person not a graduate or licentiate of medicine has been unable to present himself for examination to any of said boards, as provided in section one of this act, then and in such case it shall be lawful for either of said boards, on good cause shown why said person was unable so as to present himself for examination, to examine such person touching his qualifications to practice medicine or surgery, and if said examination shall be satisfactory to the board, it shall thereupon issue its certificate in accordance with the facts, and the lawful holder thereof shall be entitled to all the rights and privileges of graduates or licentiates to whom certificates have been issued under this act and the act to which this act is amendatory and supplementary, but no such examination shall be had after the expiration of sixty days from the time this act shall take effect.

SEC. 11. This act shall be in effect from and after its passage.

Pharmacy.—An act to regulate the practice of pharmacy in the city and county of San Francisco, approved March 28, 1872; 1871–2, 681; amended March 31, 1876; 1875–6, 583; was still further amended by act of March 30, 1878; 1877–8, 838. By Stats. 1883, 93, the act of February 3, 1876, amending the pharmacy act of 1872, was repealed.

An Act to regulate the sale of certain poisonous substances.

[Approved April 16, 1880; 1880, 102 (Ban. ed. 341).]

Poisonous substances, how sold.

SECTION 1. It shall be unlawful for any person to retail any of the substances poisonous, and by reason thereof dangerous to human life, without distinctly labeling the bottle, box, vessel, or package, and the wrapper or cover thereof in which such substance is contained, with the common or usual name thereof, together with the word "poison," and the name and place of business of the seller. Nor shall it be lawful for any person to retail any of the substances enumerated in either of said schedules to any person, unless, on due inquiry, it is found that the person receiving the same is aware of its poisonous character, and that it is to be used for a legitimate purpose.

Same retailed.

SEC. 2. It shall be unlawful for any person to retail any of the substances enumerated herein unless, before delivering the same, such person shall make, or cause to be made, in a book kept for that purpose only, an entry stating the date of the sale, the name and address of the purchaser, the name and

quantity of the substance sold, the purpose for which it is stated by the purchaser to be required, and the name of the dispenser. The book required by this act shall be always open to inspection by the proper authorities. It shall also be the duty of the person dispensing any of the substances enumerated in either of said schedules to ascertain by due inquiry whether the name and address given by the person receiving the same are his true name and address, and for that purpose may require such person to be identified.

Misdemeanor—Penalty.

SEC. 3. Any person who shall dispense any of the substances enumerated in either of said schedules without complying with the regulations herein prescribed shall, for every such offense, be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment; provided, that nothing in this act shall be so construed as to apply to the prescriptions of any physician authorized to practice medicine under the laws of this state.

SEC. 4. This act shall take effect and be in force from and after June first, eighteen hundred and eighty.

SCHEDULE A.

List of poisons.

Arsenic, corrosive sublimate, hydrocynic acid, cyanite of potassium, strychnia, essential oil of bitter almonds, opium, aconite, belladonna, conium, nux-vomica, henbane, tansy, savin, ergot, cotton root, digitalis, chloroform, chloral hydrate, and all preparations, compounds, salts, extracts, or tinctures of such substances, except preparations of opium containing less than two grains to the fluid ounce.

SCHEDULE B.

List of poisons.

White precipitate, red precipitate, red and green iodides of mercury, colchicum, cantharides, oxalic acid, croton oil, sulphate of zinc, sugar of lead, carbolic acid, sulphuric acid, muriatic acid, nitric acid, phosphorus, and all preparations, compounds, salts, extracts, or tinctures of such substances.

MENDOCINO COUNTY.

References to special and local acts.—Boundaries, 1850, 61; 1851, 178; 1859, 98; 1860, 334; 1871-2, 766.

Seat of justice, 1859, 101, 177.

Legalizing and confirming general and supplemental assessment rolls, etc., and extending time for collection of revenue, 1859, 6.

Providing for organization, 1859, 98; 1877, 252; 1869, 334; 1861, 213.

In relation to trial jurors in court of sessions and county court, 1859, 159; 1862, 247.

Fixing terms of county court, probate court, and court of sessions, 1859, 225.

Authorizing board of supervisors to levy additional tax for county purposes, 1859, 233; 1861, 250.

Concerning commissioners of election appointed under act for organization, 1859, 252.

Authorizing county to retain state's portion of poll-tax, etc., to be applied to construction and improvement of wagon-road from Cloverdale to Yreka, 1859, 323; 1861, 173.

Providing for improving Novarra river, 1859, 325.

Authorizing tax collector to collect certain delinquent taxes, and extending time for collecting same, 1860, 18.

Extending time for collection of taxes, 1860, 21, 81.

Fixing terms of county court, court of sessions, and probate court, 1860, 258.

To provide for the disposal of lots in the towns and villages on public lands, 1860, 287.

Authorizing and empowering A. W. Macpherson and others to construct and maintain booms on certain rivers (Albion, Big, and Noyo), 1861, 19.

Authorizing J. J. Cloud to construct and maintain wharf at Punta Arena, 1861, 78.

Restoring Eliza Martin, late Eliza Hall, to her former authority as executrix of Edward H. Hall, deceased, and authorizing her to sell real and personal property, 1861, 275.

Making warrants drawn on general fund receivable for county taxes, 1861, 296.

Concerning board of supervisors, 1861, 352.

Authorizing M. T. Smith to construct and maintain wharf at Fishing Rock, 1861, 352.

Granting right to construct bridge across Big river to S. W. Hill and other, 1861, 387.

Concerning roads and highways, 1861, 482; 1863, 725.
Granting right to construct bridge across Noyo river, near its mouth, to J. Burns and others, 1861, 487.
Granting right to construct bridge across Albion river, near its mouth, to J. Townshend, 1861, 489.
Authorizing J. B. Price and associates to construct and maintain turnpike from Cloverdale to Sanel, and to charge and collect toll for travel, 1862, 101; 1863, 502.
Providing for public administrator, 1862, 43; 1863, 23.
Authorizing and empowering J. Hendy and others to construct and maintain booms on Novarro river, 1862, 109.
Authorizing J. Hendy and others to construct wharf at mouth of Novarro river, 1862, 128.
Authorizing and empowering W. H. Kelly to construct and maintain booms on Gasper creek, 1862, 213.
Authorizing and empowering F. Brown or assigns to construct and maintain booms and piers on Garcia creek, 1862, 231.
To provide for funding indebtedness, 1862, 301; 1863, 569; 1863–4, 165.
Authorizing J. S. Rutherford and G. E. Webber to construct railroad and railroad wharf, 1862, 571.
Granting J. P. Smith and others right to construct wagon-road from Cloverdale to McDonald's house, and collect tolls, 1863, 233.
Authorizing and empowering J. S. Rutherford and G. E. Webber to construct and maintain booms on Guallalla river, 1863, 243.
Authorizing P. S. Palmstream to establish, keep up, and maintain public ferry across Big river, near Big River Mills, 1863, 263.
Granting right to construct bridge across Albion river, near its mouth, 1863, 711.
Authorizing S. B. Campbell to construct and maintain wharf at Punta Arena, 1863, 752.
Providing for election of sheriff, 1863–4, 13.
Granting to R. Stickney right to construct and maintain bridge across Big river, 1863–4, 33.
Authorizing county treasurer to collect and receive certain public moneys as revenue, 1863, 110.
Concerning townships and legalizing election of certain officers (justices of the peace and constables), 1863–4, 150.
Fixing salary of superintendent of public schools, 1863–4, 158.
Fixing time of holding county court and probate court, 1863–4, 476.
Relating to board of supervisors, 1863–4, 496.
Time of holding district court in, 1865–6, 13.
Fees of office, 1865–6, 17.
Rights of way for wagon-road, 1865–6, 112.
Wharf franchise to M. T. Smith and others, at Punta Arenas, 1865–6, 132.
Bridge franchise to A. W. Macpherson and and others, 1865–6, 133.
To prevent stallions from running at large, 1865–6, 327; 1867–8, 70; 1869–70, 68.
Road franchise from Cloverdale to Stanley's ranch, 1865–6, 158.
Bridge franchise at Noyo river, 1865–6, 354.
Roads and highways, act amended, 1865–6, 381; 1867–8, 495; 1869–70, 88.
Franchise to E. J. Stephens to construct "chute," 1865–6, 455.
Franchise to W. Codington and others to construct turnpike, 1865–6, 480.
Wharf franchise to H. B. Tichenor and others, 1865–6, 489; 1867–8, 135.
Auditor and treasurer to purchase books, 1865–6, 634.
To pay J. W. Morris, 1865–6, 782.
Treasurer to collect revenue, 1865–6, 827; 1867–8, 434.
For collection of revenue, 1865–6, 860.
Act concerning warrants, 1867–8, 122.
Railroad wharf and bridge franchise, 1867–8, 135.
Public and private roads, 1867–8, 158; 1869–70, 231.
Funding indebtedness, 1867–8, 280.
Toll-road franchise to G. Shwind, 1867–8, 350.
Wharf franchise to J. B. Ford and others, 1867–8, 402.
Fees and salaries, 1867–8, 448; 1869–70, 148.
Notaries public for, 1867–8, 461.
Franchise to E. Beebe for chute and moorings, 1867–8, 477.
Franchise to J. Kenny for chute and landing, 1867–8, 486.
To define legal distances, 1867–8, 563.
Wharf franchise to M. Bourn, 1869–70, 94.
Franchise to L. Gerlock and others for chute and landing, 1869–70, 94.
Franchise to W. S. Ferguson for chute and landing, 1869–70, 101.
Act in relation to herding sheep, 1869–70, 304.
To aid construction of wagon-road from Round valley, 1869–70, 503.
To aid in construction of telegraph line, 1869–70, 508; 1873–4, 81.
To levy additional tax for wagon-road from Ukiah city, 1869–70, 864.
To separate office of recorder from that of county clerk, 1871–2, 17.
To authorize Ukiah school district trustees to purchase school property, 1871–2, 22.
For erection of county buildings, 1871–2, 24.
Issue of bonds for wagon-roads, 1871–2, 125, 327.
Concerning roads and highways, 1871–2, 131.
Salary of district attorney, 1871–2, 654.
In third congressional district, 1871–2, 714.
Defining boundary, 1871–2, 766.
As to herding of sheep, 1871–2, 890.
Resolution as to Round Valley Indian Reservation, 1871–2, 965.
As to election and office of supervisors, 1873–4, 33.
Fixing salaries of certain officers, 1873–4, 174.
Repealing special road laws, 1873–4, 359.
In twenty-seventh senatorial district, 1873–4, 369.
Issue of bonds for construction of wagon-roads, 1873–4, 425.
Election of district assessor and collector in Ukiah school district, 1873–4, 446.
To regulate fees of certain officers, 1873–4, 539.
Construction of free bridges in Big River township, 1873–4, 544, 781.
Authorizing Daniel Gobbi to remove human remains, 1873–4, 569.
Issue of additional coupons on certain bonds, 1873–4, 601.
To prevent hunting and shooting on private grounds, 1873–4, 792.

For payment of outstanding claims for support of public schools, 1875–6, 76.
To incorporate town of Ukiah, 1875–6, 162.
For the purchase and erection of certain bridges and improvement of certain roads, 1875–6, 376.
To encourage destruction of certain wild animals, 1875–6, 533; repealed 1877–8, 2.
Providing for payment of funded indebtedness, 1875–6, 851.
Repealing act for destruction of certain wild animals, 1877–8, 2.
For sale of certain road and bridge bonds, 1877–8, 71.
Repealing act relating to herding of sheep, 1877–8, 79.
Fixing salary of county recorder, 1877–8, 183.
For issuing bonds for road and bridge purposes, 1877–8, 565.
For construction of bridges, 1877–8, 749, 851.
For election of supervisors, 1877–8, 1021.
Amending act for funding indebtedness, 1877–8, 1022.

MERCED COUNTY.

References to special and local acts.—Boundaries, 1855, 125; 1856, 183; 1865–6, 172; 1867–8, 56.
Seat of justice, 1855, 126.
Creating Merced county, defining boundaries, and providing for organization, 1855, 125; 1860, 13.
Authorizing board of supervisors to audit account of J. W. Fitzhugh for services as county judge, 1856, 107.
Changing time of holding probate court, 1856, 116.
Creating Fresno county, 1856, 183.
Fixing amount of official bonds of county officers, 1858, 119.
Concerning salary of county judge, 1860, 13 (refers to 1853, 179).
Creating board of water commissioners, and defining their duties, 1860, 182.
Authorizing board of supervisors to levy additional tax for county purposes, 1863, 17.
Providing for election of board of supervisors, 1863–4, 6.
To levy additional tax for county purposes, 1865–6, 115.
Powers conferred on supervisors, 1865–6, 172.
County assessor made salaried officer, 1865–6, 200.
Protection of public and private roads, 1865–6, 235.
To prevent stallions from running at large, 1865–6, 327; 1867–8, 70; 1869–70, 68.
Official publications, 1865–6, 453.
To improve navigation of San Joaquin river, 1865–6, 536.
District attorney to reside at county seat, 1865–6, 630.
Act concerning rodeos, 1865–6, 673.
Authorized to aid construction of Southern Pacific Railroad, 1865–6, 816.
Boundaries, 1867–8, 56.
To regulate election of supervisors, 1867–8, 72.
Franchise to improve river, 1867–8, 262.
Fees and salaries, 1867–8, 448; 1869–70, 148.
To be in the thirteenth judicial district, 1867–8, 658.
Special tax for school-house, 1869–70, 87.
Act in relation to herding sheep, 1869–70, 304.
Notaries public, number increased, 1869–70, 402.
Bounty tax for destruction of squirrels, 1869–70, 316.
To prevent trespassing of animals, act made applicable, 1870, 410.
To levy tax for road purposes, 1869–70, 417.
Terms of district court, 1869–70, 792.
Fixing bonds of public administrator and coroner, 1871–2, 21.
To levy special tax to construct bridge, 1871–2, 390.
To protect agriculture, 1871–2, 412.
Salary of district attorney, 1871–2, 654
In fourth congressional district, 1871–2, 714.
As to herding of sheep, 1871–2, 890.
Repealing special road laws, 1873–4, 22.
To provide for school-house in Merced school district, 1873–4, 133, 605.
For sale of court-house block in Snelling, 1873–4, 239.
In fifth senatorial district, 1873–4, 366.
Salaries of county officers, and separating office of recorder from that of county clerk, 1873–4, 660.
Regulating fees of witnesses in criminal cases, 1873–4, 732; 1875–6, 493.
To abate squirrel nuisance, 1875–6, 143.
To fix terms of county and probate courts, 1875–6, 215.
In relation to collection of licenses, 1875–6, 508.
To create West Side irrigation district, 1875–6, 731, 835.
Extending time for publishing delinquent tax list, 1877–8, 64.
Regulating salaries of assessor and sheriff. 1877–8, 107.
Regulating salary of district attorney, 1877–8, 137.
Concerning trespassing animals, 1877–8, 176.
To protect Merced city against fire, 1877–8, 214.
Amending act of February 18, 1874, for building school-house in Merced school district, 1877–8, 353.
Granting G. E. Isaacs right to supply town of Merced with fresh water, 1877–8, 354.
Creating West Side irrigation district, 1877–8, 468.
To provide a new great register, 1877–8, 693.
Regulating collection of poll-tax, 1877–8, 837.
For payment of indebtedness of Snelling school district, 1877–8, 844.
Fixing terms of county and probate courts, 1877–8, 848.
Repealing act for destruction of squirrels, etc., 1880, 105 (Ban. ed. 344).

MEXICAN WAR.

See Veterans' Home Association.

MINES AND MINERS.

An Act for the protection of miners.

[Approved March 13, 1872; 1871-2, 413.]

Protection of miners.

SECTION 1. It shall not be lawful for any corporation, association, owner, or owners of any quartz-mining claims within the state of California, where such corporation, association, owner, or owners employ twelve men daily, to sink down into such mine or mines any perpendicular shaft or incline beyond a depth from the surface of three hundred feet without providing a second mode of egress from such mine, by shaft or tunnel, to connect with the main shaft at a depth of not less than one hundred feet from the surface.

Modes of escape.

SEC. 2. It shall be the duty of each corporation, association, owner, or owners of any quartz mine or mines in this state, where it becomes necessary to work such mines beyond the depth of three hundred feet, and where the number of men employed therein daily shall be twelve or more, to proceed to sink another shaft or construct a tunnel so as to connect with the main working-shaft of such mine as a mode of escape from underground accident, or otherwise. And all corporations, associations, owner, or owners of mines as aforesaid, working at a greater depth than three hundred feet, not having any other mode of egress than from the main shaft, shall proceed as herein provided.

Liabilities.

SEC. 3. When any corporation, association, owner, or owners of any quartz mine in this state shall fail to provide for the proper egress as herein contemplated, and where any accident shall occur, or any miner working therein shall be hurt or injured, and from such injury might have escaped if the second mode of egress had existed, such corporation, association, owner, or owners of the mine where the injuries shall have occurred shall be liable to the person injured in all damages that may accrue by reason thereof; and an action at law in a court of competent jurisdiction may be maintained against the owner or owners of such mine, which owners shall be jointly or severally liable for such damages. And where death shall ensue from injuries received from any negligence on the part of the owners thereof, by reason of their failure to comply with any of the provisions of this act, the heirs or relatives surviving the deceased may commence an action for the recovery of such damages as provided by an act entitled an act requiring compensation for causing death by wrongful act, neglect, or default, approved April twenty-sixth, eighteen hundred and sixty-two.

SEC. 4. This act shall take effect and be in force six months from and after its passage.

An Act for the protection of coal mines and coal miners.

[Approved March 27, 1874; 1873-4, 726.]

Map.

SECTION 1. The owner or agent of every coal mine shall make or cause to be made an accurate map or plan of the workings of such coal mine, on a scale of one hundred feet to the inch.

Copies.

SEC. 2. A true copy of which map or plan shall be kept at the office of the owner or owners of the mine, open to the inspection of all persons, and one copy of such map or plan shall be kept at the mines by the agent or other person having charge of the mines, open to the inspection of the workmen.

Shafts or outlets.

SEC. 3. The owner or agent of every coal mine shall provide at least two shafts, or slopes, or outlets, separated by natural strata of not less than one hundred and fifty feet in breadth, by which shafts, slopes, or outlets distinct means of ingress and egress are always available to the persons employed in the coal mine; provided, that if a new tunnel, slope, or shaft will be required for the additional opening, work upon the same shall commence immediately after the passage of this act, and continue until its final completion, with reasonable dispatch.

Ventilation.

SEC. 4. The owner or agent of every coal mine shall provide and establish for every such mine an adequate amount of ventilation, of not less than fifty-five cubic feet per second of pure air, or thirty-three hundred feet per minute, for every fifty men at work in such mine, and as much more as circumstances may require, which shall be circulated through to the face of each and every working place throughout the entire mine, to dilute and render harmless and expel therefrom the noxious, poisonous gases, to such an extent that the entire mine shall be in a fit state for men to work therein, and be free from danger to the health and lives of the men by reason of said noxious and poisonous gases, and all workings shall be kept clear of standing gas.

Inside overseer—Duties.

SEC. 5. To secure the ventilation of every coal mine, and provide for the health and safety of the men employed therein, otherwise and in every respect, the owner, or agent, as the case may be, in charge of every coal mine, shall employ a competent and practical inside overseer, who shall keep a careful watch over the ventilating apparatus, over the air ways, the traveling ways, the pumps and sumps, the timbering, to see as the miners advance in their excavations that all loose coal, slate, or rock overhead is carefully secured against falling; over the arrangements for signaling from the bottom to the top, and from the top to the bottom of the shaft or slope, and all things connected with and appertaining to the safety of the men at work in the mine. He, or his assistants, shall examine carefully the workings of all mines generating explosive gases, every morning before the miners enter, and shall ascertain that the mine is free from danger, and the workmen shall not enter the mine until such examination has been made and reported, and the cause of danger, if any, be removed.

SEC. 6. The overseer shall see that the hoisting machinery is kept constantly in repair and ready for use, to hoist the workmen in or out of the mine.

Owner.

SEC. 7. The word "owner" in this act shall apply to lessee as well.

Right of action.

SEC. 8. For any injury to person or property occasioned by any violation of this act, or any willful failure to comply with its provisions, a right of action shall accrue to the party injured for any direct damages he or she may have sustained thereby, before any court of competent jurisdiction.

Liability.

SEC. 9. For any willful failure or negligence on the part of the overseer of any coal mine, he shall be liable to conviction of misdemeanor, and punished according to law; provided, that if such willful failure or negligence is the

cause of the death of any person, the overseer, upon conviction, shall be deemed guilty of manslaughter.

Boilers.

SEC. 10. All boilers used for generating steam in and about coal mines shall be kept in good order, and the owner or agent thereof shall have them examined and inspected, by a competent boiler-maker, as often as once in three months.

SEC. 11. This act shall not apply to opening a new coal mine.

SEC. 12. This act shall take effect immediately.

An Act to provide a state hospital and asylum for miners.

[Approved March 14, 1881; 1881, 81.]

Erection of state hospital for miners.

SECTION 1. There shall be erected, as soon as conveniently may be, upon some suitable site, to be determined and obtained as is hereinafter provided, a public hospital and asylum for the reception, care, medical, and surgical treatment, and relief of the sick, injured, disabled, and aged miners, which shall be known as the "California State Miners' Hospital and Asylum."

Trustees of, how appointed.

SEC. 2. The governor shall nominate, and by and with the advice and consent of the senate appoint, five persons to serve as trustees of the said institution, who shall be a body politic and corporate by the name and style of the "Trustees of the California State Miners' Hospital and Asylum," and shall manage and direct the concerns of the institution, and make all necessary by-laws and regulations, and shall have power to receive, hold, dispose of, and convey all real and personal property conveyed to them by gift, devise, or otherwise, for the use of said institution, and shall serve without compensation. Of those first appointed, two shall serve for two years, and three for four years; and at the expiration of the respective terms, each class thereafter shall be appointed for four years. A vacancy in said board, from any cause, shall be filled by appointment by the governor for the unexpired term.

Superintendent, how appointed.

SEC. 3. The said trustees shall have charge of the general interests of the institution; they shall appoint the superintendent, who shall be a skillful physician and surgeon, subject to removal or re-election no oftener than in periods of ten years, except by infidelity to the trust reposed in him, or for incompetency.

By-laws.

SEC. 4. The trustees, by and with the consent of the governor, shall make such by-laws and regulations for the government of the institution as shall be necessary; they shall appoint a treasurer, who shall give bonds to the people of the state of California for the faithful discharge of his duties; and they shall fix the compensation of all officers, assistants, and attachés, who may be necessary for the just and economical administration of the affairs of said institution.

Charges for medical attendance.

SEC. 5. Indigent miners shall be charged for medical attendance, surgical operations, board, and nursing while residents in the hospital and asylum, no more than the actual cost; paying patients, whose friends can pay their expenses, and who are not chargeable upon townships and counties, shall pay according to the terms directed by the trustees.

Powers of boards of supervisors.

SEC. 6. The several boards of supervisors of counties, or any constituted authority in the state having care and charge of any indigent sick, or aged person or persons, if satisfactorily proven by them to have been miners, shall have authority to send to the California State Miners' Hospital and Asylum such persons, and they shall be severally chargeable with the expenses of the care, maintenance, and treatment, and removal to and from the hospital and asylum of such patients.

Trustees to report.

SEC. 7. The trustees shall annually, at such time as the governor may designate, report to him, for transmission to the legislature, such a statement as he may require as to the management of the said hospital and asylum.

SEC. 8. This act shall take effect immediately.

MINING BUREAU.

An act imposing a tax on the issue of certificates of stock corporations, approved April 1, 1878, 1877-8, 955, which is referred to in the following act, will be found given in full, Civil Code, sec. 327.

An Act to provide for the establishment and maintenance of a mining bureau.

[Approved April 16, 1880; 1880, 115 (Ban. ed. 373).]

Mining bureau.

SECTION 1. There shall be and is hereby established in this state a mining bureau, the principal office of which shall be maintained in the city of San Francisco, at which place there shall be collected by the state mineralogist, and preserved for study and reference, specimens of all the geological and mineralogical substances, including mineral waters, found in this state, especially those possessing economic or commercial value, which specimens shall be marked, arranged, classified, and described, and a record thereof preserved, showing the character thereof, and the place from whence obtained. The state mineralogist shall also, as he has opportunity and means, collect, and in like manner preserve at said office, minerals, rocks, and fossils of other states, territories, and countries, and the collections so made shall at all reasonable hours be open to public inspection, examination, and study.

State mineralogist—Term—Salary.

SEC. 2. It shall be the duty of the governor to appoint a citizen of this state having a practical and scientific knowledge of mining and mineralogy to the office of state mineralogist, to hold his said office for the term of four years, or until the appointment and qualification of his successor, who shall take and subscribe the oath of office prescribed by the constitution, and who shall receive for his services a salary of three thousand dollars per annum, to be paid as other officers of the state are paid, and shall also receive his necessary traveling expenses when traveling on the business of his office, to be allowed and audited by the state board of examiners, the whole to be paid out of the mining-bureau fund hereinafter provided for, and not otherwise.

Duties.

SEC. 3. In addition to the collection, classification, arranging, and preservation of specimens as provided in the first section of this act, it shall be the duty of the state mineralogist to make analytical assays as required, and when the funds of the mining bureau are sufficient therefor, to provide and maintain a library of works on mineralogy, geology, and mining; to arrange in cases such specimens as he may collect; to procure and preserve models and drawings of

mining machinery, and of milling machinery used in the reduction of ores; to correspond with established schools of mining and metallurgy, and obtain and preserve for public inspection and use such information respecting improvements in mining and mining machinery as will be of practical value to the people of this state; to visit the several mining districts of each county of the state, from time to time, ascertain and record their history, describe their geological formation and altitudes, the character of the mines and ores, and the general development of the district. At the close of each year he shall make a report in detail to the governor, showing the amount of disbursements of the bureau under his charge, the number of specimens collected, and giving such statistical information in reference to mines and mining as shall be deemed important.

Assistants, when may be appointed.

SEC. 4. The state mineralogist may, from time to time and as the funds in the mining bureau fund will permit, appoint such assistants as he may deem necessary and proper for the carrying out of the objects of this act, and the efficient provision and maintenance of a bureau of mining information and statistics, and may procure and maintain the necessary rooms and furniture for the office and the uses of the bureau in San Francisco; but the entire expenses of the bureau, for salaries, assistance, rents, furniture, fuel, and all other things pertaining to the bureau, must not in any one year be greater than can be paid out of the mining bureau fund herein provided for.

Fund, how provided.

SEC. 5. For the purpose of establishing a fund for the maintenance of said mining bureau, it shall be the duty of the tax collectors in the several counties in this state, and of the license collector of the city and county of San Francisco, on the second Monday in January, April, July, and October in each year, to transmit by express to the state treasurer all moneys collected by them from mining corporations, or from corporations formed for milling ores, or for supplying water for mining purposes, under or by virtue of the act entitled "An act imposing a tax on the issue of certificates of stock corporations," approved April first, eighteen hundred and seventy-eight, and to forward to the state controller by mail a certificate showing the amount of money so forwarded to the state treasurer, and the date when the same was transmitted, and also showing the names of the several corporations from which the same was received, and the amount received from each. The state treasurer shall receive the amounts so transmitted, and give duplicate receipts therefor, one of which shall be filed with the state controller, and the other shall be returned by mail, or return express, to the collector from whom the money was received; and after paying out of the money so received the charges for the transmission thereof, the amount of which shall be noted on the receipt filed with the state controller, he shall retain the remainder in his hands as a separate fund, to be known as the mining-bureau fund, to be used only in payment of drafts made for the expenses of the mining bureau established under this act, and out of which all the expenses of said bureau shall be paid.

Duties of tax collectors and license collector of San Francisco.

SEC. 6. Such tax collectors and license collector shall hereafter be required to pay into the county treasuries of their respective counties only that portion of the moneys collected by them under the act of the legislature mentioned in

the last preceding section, which is collected from corporations other than those mentioned in section five of this act.

SEC. 7. This act shall take effect and be in force from and after its passage.

An act to appropriate money for the support of the mining bureau, and to repeal all acts and parts of acts inconsistent therewith, approved March 13, 1883, 1883, 219. The act appropriated five thousand dollars per annum, and repealed all acts or parts of acts inconsistent with it, and took effect immediately.

An Act supplementary to an act entitled "An act to provide for the establishment and maintenance of a mining bureau," approved April 16, 1880.

[Approved March 21, 1885; 1885, 217.]

Trustees of state mining bureau.

SECTION 1. All property of this state pertaining to said mining bureau, and the money and financial affairs thereof, shall be vested in, and be under the direction and control of, a board of trustees of said bureau.

Number of trustees.

SEC. 2. It shall be the duty of the governor of the state to appoint five (5) citizens and residents of this state to be such trustees.

State mineralogist a director.

SEC. 3. The appointees herein mentioned, when assembled, shall constitute the board of trustees of the state mining bureau, three of whom shall constitute a quorum. The board shall have power, by said name, to sue and defend. They shall keep a record of all their proceedings, and they shall elect one of those so appointed to be president of the board, and shall have the right to appoint a custodian of the museum and other employees. The state mineralogist shall be the director of the museum, and shall have the right to appoint a custodian of the museum, and other employees, subject to the approval of the board of trustees, and it shall be his duty to consult the board in all matters of importance.

Rules of board.

SEC. 4. Said board shall make rules for its own government, for regulating the custody and disbursement of funds, and the mode of drawing the same from the state treasury.

Report of trustees.

SEC. 5. The board of trustees shall, annually, report to the governor of the state the condition of the bureau, with a statement of the receipts and expenditures in detail, which report shall be published in the annual report of the state mineralogist, provided for in the act to which this is supplementary.

Repayment of Wells, Fargo, & Co.

SEC. 6. The trustees are hereby empowered to pay out of any moneys coming into their hands the amount advanced by Wells, Fargo, and Company, shown in the financial statement of the state mineralogist, and published in his reports.

To receive legacies.

SEC. 7. The board of trustees shall be empowered to receive, on behalf of the state, bequests or gifts, legacies, and devises, real estate and other property, and to use the same in accordance with the wishes of the donors; and if no instructions are given, to use their discretion for the best interests of the state museum.

Specimens of ores at world's fair.

SEC. 8. The board of trustees may, with the assistance of the state mineralogist, prepare a special collection of ores and minerals of California, to be sent to any world's fair, or exposition, at which they may deem it desirable to display the mineral wealth of the state.

SEC. 9. All acts or laws in conflict with this act are hereby repealed.

SEC. 10. This act shall take effect immediately.

MODOC COUNTY.

References to special and local acts.—Act to create county, etc., 1873–4, 124, 517.

Concerning lawful and partition fences, 1873–4, 362; 1875–6, 71.

In twenth-eighth senatorial district, 1873–4, 369.

To pay debt due N. Fitzgerald, 1873–4, 570.

For collection of unpaid taxes, 1873–4, 842.

For apportionment of school moneys, 1873–4, 896; 1875–6, 33.

For erection of jail and issue of bonds, 1875–6, 18.

Supply of certain officers with California reports, 1875–6, 16.

Fixing amount of treasurer's bond, 1875–6, 154.

Fixing terms of county and probate courts, 1875–6, 171.

To change name of Dorris Bridge to Alturas, 1875–6, 513.

For payment of semi-annual interest and principal of bonds issued by Modoc to Siskiyou county, 1875–6, 649.

Concerning hogs in Adin township, 1877–8, 111.

Regulating fees and salaries, 1877–8, 140, 454.

To restrict herding of sheep to certain pastures, 1877–8, 241.

For erection of county clerk's office, 1877–8, 326.

Fixing terms of county and probate courts, 1877–8, 452.

For removing obstructions to salmon in Pitt river, 1880, 104 (Ban. ed. 343).

MONO COUNTY.

References to special and local acts.—Boundaries, 1861, 235; 1863–4, 178; 1865–6, 144; 1869–70, 20, 421; 1871–2, 316.

Seat of justice, 1861, 235; 1863–4, 30.

Providing for organization, 1861, 235.

Fixing times of holding court of sessions, county court, and probate court, 1861, 239.

Providing for appointment of assayer of ores and metals, and defining duties, 1861, 566.

Relative to office of superintendent of common schools, 1862, 42.

Authorizing W. H. Dickson and others to construct and maintain toll-road, 1862, 99.

Authorizing county auditor to issue certain bonds and providing for construction of road (from Sonora to Aurora), 1862, 439.

Creating current expense fund, 1863, 27.

Granting right to J. W. Calder and others to lay water-pipes for supplying Aurora with pure water, 1863, 118. (Since the passage of this and some of the following acts it has been found that Aurora is not in the state of California.)

Granting to F. K. Bechtel and others right to erect gas-works and lay gas-pipes to supply Aurora with illuminating gas, 1863, 127.

Exempting certain property belonging to Esmeralda Rifle Company from taxation, 1863, 129.

Providing for construction of wagon-road from Sonora to Aurora, 1863, 134, 761; 1863–4, 157, 364.

Granting to G. H. Brown and others right to build turnpike at point on Big Tree road to Silver Mountain, and thence to eastern line of state, 1863, 230.

Authorizing E. Gallagher and others to lay down water-pipes in Aurora, 1863, 401.

Granting right to construct turnpike between Chinese Camp and Aurora, 1863, 564.

Authorizing removal of office and principal place of business of mining and other corporations from Aurora to San Francisco, 1863–4, 109.

Granting to B. W. Hathaway and others right to construct and maintain turnpike or toll-road from Sonora to state line in Mono county, 1863–4, 155.

Creating Alpine county, 1863–4, 178.

Providing for construction of wagon and turnpike road by H. Smith and others, 1863–4, 222.

To enable Sonora and Mono wagon-road commissioners to settle with county, 1863–4, 364.

For election of county officers, 1863–4, 393.

Granting to J. N. Dudleston and others right to construct and maintain toll road, 1863–4, 416.

Authorizing Owens River Canal Company to improve channel of Owens river cañon, 1863–4, 481.

Creating Coso county, 1863–4, 528.

Time of holding county court, 1865–6, 5.

Salary of county judge and district attorney, 1865–6, 9.

For relief of county judge, 1865–6, 40.

Sonora and Mono road, near Antelope valley, 1865–6, 58.

Franchise to Samuel French and others to construct turnpike, 1865–6, 59.

Boundaries defined, 1865–6, 144; 1869–70, 20, 421.

Allowance of mileage and commissions to county treasurer, 1865–6, 231.

Granting leave of absence to sheriff, 1865–6, 361.

Not to collect tax in boundaries of Inyo, 1865–6, 358.

Trespass of animals on private property, 1865–6, 440.

Construction of wagon-road to Owens river, 1865–6, 632.
Terms of district court in, 1865–6, 863; 1867–8, 33.
County clerk to act as school superintendent, 1867–8, 50.
Granting leave of absence, to district attorney, 1867–8, 144.
Fees and salaries, 1867–8, 448; 1869–70, 148.
To define legal distances, 1867–8, 563.
Dividing county into supervisor districts, 1867–8, 678.
For the relief of Anna Lee, 1867–8, 664.
Principal place of business of San Justo Homestead Company, 1869–70, 40.
Supervisors to transfer money, 1869–70, 48.
Special tax for contingent fund, 1869–70, 54.
Leave of absence to R. G. Watkins, 1869–70, 70.
To pay outstanding county indebtedness, 1869–70, 232.
To confer additional powers on supervisors, 1869–70, 418.
Tax for officers' salaries, 1869–70, 419.
To allow claim of Dudleston, 1869–70, 419.
To receive bonds from Inyo county, 1869–70, 421.
Salary of district attorney, 1871–2, 654.
In fourth congressional district, 1871–2, 714.
Concerning official bonds, 1873–4, 180.
To prevent stallions running at large, 1873–4, 228.
In fourth senatorial district, 1873–4, 366.
Concerning employment of teachers, 1873–4, 509.
Fixing compensation of assessor, 1873–4, 708.
To protect agriculture, 1873–4, 845.
Authorizing issue of bonds for wagon-road from Antelope valley to town of Benton, 1877–8, 384.
For improvements of public roads, 1877–8, 438.
For distribution of school moneys, 1877–8, 746.
To provide additional judge for superior court, 1880, 99 (Ban. ed. 335); repealed, 1883, 62.

MONTEREY COUNTY.

References to special and local acts.—Boundaries, 1850, 59; 1851, 173; 1861, 349; 1863, 358.
Seat of justice, 1850, 59; 1851, 173.
Incorporating city of Monterey, 1850, 131; 1851, 367; 1853, 159; 1857, 55; 1862, 274; 1865–6, 834.
Concerning archives in Monterey, 1851, 443.
Providing for erection of jail, 1854, 188.
Granting J. R. Beals and others right to construct toll bridge across Pajaro river, 1854, 197; 1856, 123.
Abolishing board of supervisors, etc., 1854, 222.
Concerning collection of taxes now due, 1855, 19.
Fixing time of holding several courts authorized to be held by county judge, 1855, 40; 1856, 42.
To provide for extinguishment of indebtedness, present and accruing, 1855, 122.
Concerning office of public administrator (fees), 1856, 80; 1858, 114, 297; 1859, 24, 96, 234.
Concerning debt and current expenses and providing for funding and payment, 1856, 179; 1857, 82.
Authorizing executor or administrator of Josefa Soto de Stokes, deceased, to sell real estate, 1857, 99.
Making grant for wharf to J. P. Leese, 1857, 231.
Authorizing Rafael Gomez to receive and enjoy certain property, 1857, 247.
Fixing compensation of certain officers (county judge and district attorney), 1857, 256.
Legalizing acknowledgments taken by recorders and their deputies, 1857, 325.
Authorizing sale of real estate of William E. P. Hartnell, deceased, 1858, 307.
Authorizing sale of real estate of Joaquin Soto, deceased, 1859, 38.
Authorizing sale of real estate of minor heirs of Juan Malarin, deceased, 1859, 70.
Concerning toll-bridge across Pajaro river at Malpaso, 1860, 13.
Concerning taxes, 1860, 147.
Declaring Salinas river navigable, 1861, 49.
Granting right to construct and maintain ferry across Salinas river at St. Paul, 1861, 182.
Establishing boundary line between Monterey and San Luis Obispo counties, 1861, 349.
Authorizing board of supervisors to make appropriations out of current expense fund (for road and bridge purposes), 1861, 414.
Granting right to construct bridge across Pajaro river to G. W. Crane and others, 1862, 62.
Concerning public roads and highways, 1862, 134.
Containing certain salaries and fees, 1862, 306, 514; 1863, 38 (refers to 1857, 273).
Defining boundary line between Monterey and San Luis Obispo counties, 1863, 358.
To prevent trespassing of animals upon private property, 1863–4, 47.
In regard to holding terms of county court, 1863–4, 113.
Concerning offices of clerk and recorder, 1863–4, 395.
Resolution relating to naval force to cruise in Monterey bay and vicinity, and to fortifications, etc., 1863–4, 560.
Time of holding county and probate court, 1865–6, 171; 1869–70, 218.
Protection of stock raisers, 1865–6, 322.
Terms of district court, 1865–6, 328.
Compensation of officers, 1865–6, 630.
Authorized to aid Southern Pacific Railroad, 1865–6, 816; 1867–8, 81.
Roads and highways, 1865–6, 822; 1867–8, 272; 1869–70, 73.
Act to incorporate city of Monterey, 1865.
Franchise for railroad and wharf, to Hale and others, 1867–8, 137.
Franchise to J. B. Smith, to construct wharf, 1867–8, 94.
Granting title to water-front, 1867–8, 202.
Hogs running at large, 1867–8, 235.
Terms of county and probate courts, 1867–8, 349; 1869–70, 218.
Fees and salaries, 1867–8, 448; 1869–70, 148.
For the preservation of trout, 1867–8, 460.
Wharf franchise to C. Moss and others, 1867–8, 645.

To redistrict county, 1867–8, 685.
Survey of Salinas slough, 1869–70, 66.
To prevent stallions running at large, 1869–70, 68.
For relief of W. V. McGarvey, 1869–70, 100.
Incorporating town of San Juan, 1869–70, 245.
In relation to herding of sheep, 1869–70, 304.
Office of tax collector, 1869–70, 315.
To encourage destruction of squirrels and gophers, 1869–70, 404.
Relocating county seat, 1869–70, 411.
Notaries public, 1869–70, 481, 802.
To protect agriculture, 1871–2, 99, 241.
To fix salary of school superintendent, 1871–2, 316.
Concerning fees of sheriff, 1871–2, 419.
Salary of district attorney, 1871–2, 654.
In fourth congressional district, 1871–2, 714.
To fix terms of county court, 1871–2, 760.
Additional notaries public, 1871–2, 792.
As to herding of sheep, 1871–2, 890.
To protect agriculture, 1873–4, 50, 474.
To create county of San Benito, 1873–4, 95, 428; 1875–6, 177.
To reorganize supervisor districts, 1873–4, 203, 432.
To incorporate Salinas city, 1873–4, 242.
Concerning public roads and highways, 1873–4, 307.
To encourage destruction of squirrels, gophers, etc., 1873–4, 337, 515.
In sixth senatorial district, 1873–4, 366.
For relief of Andrew Wasson, sheriff, 1873–4, 389.
To construct bridges over Pajaro river, 1873–4, 740.
Declaring "Moro Cajo" slough navigable, 1873–4, 790.
Bonds for school-house and fire department in Salinas city, 1873–4, 820.
To change name of town of New Republic to that of Santa Rita, 1873–4, 823.
Fixing terms of county court, 1875–6, 35.
To reincorporate Salinas city, 1875–6, 94.
Fixing terms of supervisors, 1875–6, 124.
To abate squirrel nuisance, 1875–6, 143.
For building of school-house in Salinas city, 1875–6, 545.
Transferring money from one fund to another, 1875–6, 595.
Providing for court-house and jail, 1877–8, 28, 1034.
Fixing supervisorial districts, 1877–8, 326.
For relief of J. B. Scott, 1877–8, 394.
Validating copies of certain records, 1877–8, 736.
For opening a highway and building a bridge across Salinas river, 1877–8, 832.
Relating to fees and salaries of county officers, 1877–8, 863.
Concerning roads and highways, 1877–8, 998.

NAPA COUNTY.

References to special and local acts.—Boundaries and seat of justice, 1850, 61; 1851, 178; 1852, 192; 1855, 77; 1861, 560.
Legalizing acts of the court of sessions, 1852, 193.
For relief of N. Coombs, 1852, 253.
Providing for erection of public buildings, 1854, 62.
Changing time of holding court of sessions and county court, 1855, 9; 1858, 180; 1859, 259.
Authorizing board of supervisors to levy tax for certain purposes (internal improvements), 1855, 104; 1858, 15; 1861, 408.
To fund debt and provide for payment, 1856, 192; 1857, 21; 1858, 124.
Fixing compensation of county judge, 1857, 14; 1861, 312.
Fixing compensation of district attorney, 1857, 20; 1861, 312; 1863, 331.
Authorizing B. Grimes to build wharf on Napa creek, 1857, 70.
To adjust amount of indebtedness of Napa county to Solano county, and provide for payment, 1857, 234.
Fixing compensation of certain officers (assessor and deputies, sheriff, and treasurer), 1857, 256.
Providing for transcribing and transferring certain records in Sonoma and Solano counties to Napa county, 1858, 65.
Authorizing S. and T. H. Thompson to construct wharf at Suscol ferry, 1858, 113.
Concerning roads and highways, 1858, 227; 1859, 16; 1860, 25, 42, 118; 1861, 408, 475.
Extending time for collecting taxes, 1859, 23.
Authorizing county to retain state's portion of poll-tax, etc., to be applied to construction and improvement of wagon-road from Cloverdale to Yreka, 1859, 323; 1861, 173.
Granting right to construct and maintain dam and lock across and in Napa creek, 1859, 330; 1861, 283.
Empowering M. G. Vallejo to convey certain real estate of his son, U. Vallejo, a minor, 1859, 332; 1862, 482.
Extending time for tax collector to collect taxes and make final settlement with auditor, 1860, 14.
Fixing compensation of auditor, 1860, 139.
Providing for compensation of keepers of county jail, and payment for services from November 1, 1858, 1860, 219.
Extending time for collecting taxes, 1861, 1.
Authorizing board of supervisors to levy tax for general road purposes, 1861, 408.
Defining boundaries and providing for organization of Lake county, 1861, 560.
Providing for election of supervisors, 1862, 106.
To prevent certain animals from running at large in Napa city, 1862, 210; 1863, 322.
Regulating fees of county surveyor, 1862, 230, 518.
Authorizing and requiring board of supervisors to levy special tax for improving and repairing public highway connecting Napa city and Lakeport, 1863, 28, 577; 1863–4, 113.
Authorizing board of supervisors to allow claim of C. Murphy, 1863, 318.
Separating office of county recorder from office of county clerk, 1863, 320.
Concerning estrays, 1863, 590.
Fixing time of holding court of sessions for 1863, 1863, 740.
Authorizing board of supervisors to levy special tax to improve public road from Napa valley to Lake county, 1863–4, 16.
Authorizing county treasurer to collect and receive certain public moneys as revenue, 1863–4, 110.
Providing for collecting wharfage in Napa city, 1863–4, 195.

Providing for time of holding county court and probate court, 1863–4, 295.
For regulation and improvement of Napa city, 1863–4, 297.
For improvement of Napa county by providing means for establishment of agricultural society and the state agricultural college therein, 1863–4, 366.
Authorizing board of supervisors to take and subscribe to stock of Napa Valley Railroad Company, etc., 1863–4, 383.
Concerning offices of clerk and recorder, 1863–4, 395.
Relating to board of supervisors, 1863–4, 496.
For better preservation of certain records, 1863–4, 500.
To subscribe to Napa Valley Railroad Company, 1865–6, 25.
Turnpike franchise to John Lawley and others, 1865–6, 277; 1867–8, 138.
Franchise to W. Smith and others to lay gas-pipes in Napa city, 1865–6, 304.
District attorney's fees apportioned, 1865–6, 325.
To levy tax for fire engine-house, 1865–6, 533.
Protection and establishment of public roads, 1865–6, 570; 1867–8, 48, 93.
Public highway from Suisun city to Knoxville, 1865–6, 616.
Macadamized road franchise, 1865–6, 681.
Authorizing election as to Napa Valley Railroad, 1865–6, 810.
Treasurers to collect certain revenue, 1865–6, 827.
Leave of absence granted to treasurer, 1865–6, 897.
Franchise to Lawley and others for turnpike, 1867–8, 138.
Clerk of board of supervisors, 1867–8, 144.
County judge to appoint phonographic reporter, 1867–8, 425.
To authorize California Pacific Railroad to extend its line, 1867–8, 428.
To provide for collection of revenue, 1867–8, 434.
Fees and salaries, 1867–8, 448; 1869–70, 148.
Railroad bridge across Napa creek, 1867–8, 663.
Public administrator, 1869–70, 5.
Improvement of town of Napa, 1869–70, 21, 450; 1871–2, 170, 360.
Supervisors to drain and grade streets in town of Napa, 1869–70, 22.
For building bridge across Putah creek, 1869–70, 222.
Concerning office of county clerk, 1869–70, 368.
To encourage destruction of squirrels, gophers, etc., 1871–2, 92.
To define northern boundary line, 1871–2, 305.
As to prevention of animals running at large in Napa city, 1871–2, 386.
Concerning estrays, 1871–2, 434.
In reference to county assessor, 1871–2, 437.
Salary of district attorney, 1871–2, 441, 653.
Incorporating town of Napa city, 1871–2, 542.
To protect fish and game, 1871–2, 550.
In third congressional district, 1871–2, 714.
To provide for street-railroad, 1871–2, 753.
Concerning persons under sentence of imprisonment, 1871–2, 791.
For construction of bridge across Napa river, 1871–2, 792; 1875–6, 855.
Authorizing Napa Ladies' Seminary to grant diplomas, 1871–2, 801.
As to herding of sheep, 1871–2, 890.
To prevent sale of liquor near insane asylum, 1873–4, 27.
Additional notary public, 1873–4, 30.
To fix fees of surveyor, 1873–4, 108.
To reincorporate city of Napa, 1873–4, 140; 1875–6, 550.
To reorganize board of supervisors, 1873–4, 158, 329.
To legalize certain warrants, 1873–4, 279.
In twentieth senatorial district, 1873–4, 369.
To regulate salaries, 1873–4, 392.
To dispense with copies of great register in certain elections, 1873–4, 515.
As to public roads, 1873–4, 551; 1875–6, 571.
For completion of insane asylnm, 1873–4, 565.
To protect agriculture, 1873–4, 705.
For relief of M. B. Pond, 1873–4, 707.
Providing for future management of Napa state insane asylum, 1875–6, 133.
To incorporate town of St. Helena, 1875–6, 444.
To legalize certain notarial acknowledgments (by N. M. Bonham), 1875–6, 572.
Authorizing trustees of city of Napa to procure a supply of fresh water for use of city, 1875–6, 595.
To pay B. E. Hunt for services as teacher in Calistoga school district, 1875–6, 686.
Appropriating money to insane asylum, 1875–6, 804, 851.
To provide supply of water to insane asylum, 1875–6, 883.
Authorizing supervisors to transfer a certain fund, 1877–8, 550.
Amending act regulating fees and salaries (sheriff), 1877–8, 551.
Authorizing supervisors to pay certain claims, 1877–8, 568.
Repealing act for destruction of squirrels, gophers, etc., 1877–8, 569.
To provide for building court-house, offices, and jail, 1877–8, 569.
Amending act of March 31, 1866, relating to public roads, 1877–8, 775.
Amending incorporation act of town of St. Helena, 1877–8, 791.
Amending acts for reincorporation of Napa city, 1877–8, 1011.
Providing for establishment and maintenance of public roads, 1877–8, 1024.
Repealing act of 1872 for destruction of squirrels, etc., 1880, 105 (Ban. ed. 344).
To purchase additional grounds for the state insane asylum, 1881, 88.
To erect buildings and purchase land for state insane asylum, 1883, 284.
To pay P. J. O'Connor for services as architect about insane asylum, 1885, 211.

NEVADA COUNTY.

References to special and local acts.—Boundaries and seat of justice. 1851, 177; 1852, 190, 191; 1856. 143.
Incorporating city of Nevada, 1851, 339; 1852, 188; 1856, 216; 1857, 10, 312; 1858, 125, 1860, 295; 1869–70, 652.

Providing for organization, 1851, 516.
Concerning indebtedness of Yuba county, chargeable to Nevada county, 1852, 242.
Changing name of South Yuba Mining and Sacramento Canal Company to Nevada County and Sacramento Canal Company, 1855, 1.
Legalizing certain court records, 1855, 79.
Authorizing issuance of bonds to aid erection of public buildings, 1855, 146.
Concerning fees of public administrator, 1856, 80; 1858, 114, 297; 1859, 24, 96, 234.
Concerning county officers, 1856, 108.
Authorizing special tax for county purposes, 1857, 232; 1858, 30; 1859, 181.
To supply Nevada City with water and protect against fires, 1857, 310; 1861, 179; 1865-6, 3.
Extending time for making assessment and collection of taxes, 1858, 329.
Fixing time for holding court of sessions and county court, 1859, 52; 1860, 41.
Concerning roads and highways, 1859, 61, 189; 1860, 39, 60; 1863, 266.
Regulating fees in office, 1859, 285.
Authorizing administrator of Henry Meredith, deceased, to sell real estate, 1861, 32.
Providing for maintenance of indigent sick, 1861, 33.
Providing for collection of delinquent taxes, 1861, 34, 117.
Providing for construction of a bridge in Nevada City, 1861, 78.
Incorporating town of Grass Valley, 1861, 153; 1862, 98; 1863-4, 57; 1865-6, 363; 1869-70, 16.
Authorizing sale of estate of Maria Smith, deceased, 1861, 532.
Granting certain privileges to lay down gas-pipes and supply gas in Grass Valley, to W. Loutzenheiser and others, 1862, 115.
Fixing compensation of county judge, 1862, 212.
Granting right of way to construct toll-bridge across Bear river, 1862, 283.
Granting right to construct turnpike road between Grass Valley and Bear river, 1862, 435; 1863-4, 257.
Granting right of way to construct toll bridge across Bear river, at McCourtney's crossing, 1862, 437, 560.
Repealing act concerning townships, and reinstating county organization, 1863-4, 17.
Providing for collection of delinquent taxes in Nevada City, 1863-4, 59.
Providing for time of holding county court and probate court, 1863-4, 66.
For relief of J. I. Sykes, auditor, 1863-4, 115.
Exempting active and exempt firemen from jury duty, 1863-4, 118.
Providing for location, construction, and maintenance of public roads, 1863-4, 124.
Authorizing board of supervisors to levy additional tax for county purposes, 1863-4, 137.
Allowing additional compensation to board of supervisors, 1863-4, 199.
Extending laws concerning fences over Nevada county, 1863-4, 318.
Fixing salaries of county officers, 1863-4, 94.
Transfer of funds to school fund, 1865-6, 3.
Office of county auditor, 1865-6, 12.
Exempted from act incorporating canal companies, 1865-6, 53, 605.
Additional deputies for recorder, 1865-6, 207.
Fees of sheriff and deputies, 1865-6, 205.
Notaries public, 1865-6, 234.
Amending Grass Valley charter, 1865-6, 363.
Incorporating Meadow Lake, 1865-6, 372.
For relief of Solomon Crown, 1865-6, 376.
Compensation of district attorney, 1865-6, 638.
Franchise to G. B. Crane for macadamized road, 1865-6, 681.
Protection of cemeteries, 1867-8, 26.
For relief of county treasurer, 1867-8, 59.
Act concerning jurors, 1867-8, 39.
Public and private roads, 1865-6, 381; 1867-8, 158; 1869-70, 231.
To authorize administrator of Richard H. Farquhar to sell lands, 1867-8, 195.
Special tax for school-house, 1867-8, 243.
Trustees of Nevada City to levy additional tax, 1867-8, 300.
For preservation of trout, 1867-8, 460.
Location and construction of public roads, 1867-8, 564.
For relief of C. C. Lawsend, 1867-8, 346.
To prevent stallions from running at large, 1869-70, 68.
Fees and salaries, 1869-70, 142; 1871-2, 843.
To authorize administratrix of George Keeny, deceased, to sell real estate, 1869-70, 214.
For relief of N. T. Davenport, 1869-70, 819.
To improve Little Truckee river, 1871-2, 70.
To prevent hunting and shooting on private grounds, 1871-2, 304; 1873-4, 792.
To remedy defects in certain county records, 1871-2, 377.
Location and construction of public roads, 1871-2, 448; 1873-4, 293; 1875-6, 423.
Salary of district attorney, 1871-2, 653.
To hold courts at Truckee, 1871-2, 700; 1873-4, 503.
In second congressional district, 1871-2, 714.
For protection of game, 1873-4, 80.
Leave of absence to D. B. Merry, surveyor, 1873-4, 153.
Concerning quarterly meetings of supervisors, 1873-4, 239.
Indexing of certain county records, 1873-4, 280.
In twenty-fourth senatorial district, 1873-4, 369.
For construction of railroad to Colfax, 1873-4, 492.
Appropriation to Grass Valley Orphan Asylum, 1873-4, 528.
Powers and duties of board of education of Nevada school district, 1873-4, 614.
To exempt firemen from poll-tax, 1873-4, 731; 1875-6, 287.
Establishing and defining powers and duties of board of education of Grass Valley school district, 1875-6, 233.
Regulating fees and mileage in criminal cases, 1875-6, 404.
Concerning certain taxes (compromise with Central Pacific Railroad Company), 1875-6, 621.
Authorizing supervisors to remove certain human remains, 1877-8, 104.
Amending Grass Valley incorporation act, 1877-8, 192.
Legalizing state and county tax and assessments for 1877-8, 1877-8, 197.
Amending acts incorporating city of Nevada, 1877-8, 221.
Amending act of March 21, 1872, relating to public roads, 1877-8, 279.
Relating to public roads (amending act of March 21, 1872), 1877-8, 364.

Authorizing trustees of Truckee school district to pay certain claims, 1877–8, 452.
Regulating salaries of certain officers, 1877–8, 551.
To provide a new great register, 1877–8, 693.
For construction of railroad from Truckee to Tahoe city, 1877–8, 698.
For preservation of fish in Lake Bigler, 1877–8, 746.

ORPHANS.

An Act to appropriate funds for the relief of the several orphan-asylums of this state.

[Approved April 1, 1872; 1871–2, 903.]

Appropriations for support of orphans.

SECTION 1. There shall be appropriated out of the general fund of the state of California, for the support and maintenance of the orphan inmates of the several orphan asylums or institutions in this state in which orphans are received and provided for, a sum at the rate of fifty dollars per annum for each orphan thereof, to be paid quarter-yearly in installments; provided, that such asylums as are established upon a self-sustaining basis, where the inmates are required to pay for admission, support, and maintenance therein, shall not be entitled to the benefit of this act, but only such as are supported and sustained wholly or in part by charitable donations.

Register to be kept.

SEC. 2. It shall be the duty of the directors, superintendents, or managers of every asylum entitled to the benefit of this act to keep a book, in which they shall keep a true and correct statement of the names, ages, and sex, the number of whole orphans and half-orphans, the date of their admission therein, and the date of their leaving; they shall also keep a full, true, and correct account of the amount of any and all money received from any source for the support of any orphan or half-orphan, with the names of the orphan or half-orphan for whose support such sums are paid, which book shall always be open to the inspection of the asylum commissioners, or any person appointed by them to inspect the same.

Asylum commissioners.

SEC. 3. The governor, attorney-general, and secretary of state shall be and are hereby constituted the board of asylum commissioners, with visitorial powers, who shall, either by themselves or a clerk appointed by them for the purpose, visit each asylum quarter-annually, if they deem it necessary, and examine the books of the several asylums kept as herein provided to be kept; and if the examination be made by such clerk, he shall report the result of such examination to said commissioners.

Sworn statements.

SEC. 4. It shall be the duty of said board of commissioners, or their clerk, appointed as herein provided, upon inspecting the books of said asylums, to administer an oath to the managers or superintendents thereof, to the effect that the statements therein contained are full, true, and correct; and they shall apportion and allow to each of said asylums a sum to be apportioned at the rate of fifty dollars per annum for each and every orphan kept and supported therein; provided, that two half-orphans shall only be counted as one orphan in making such apportionment; and provided further, that no orphan over the age of fourteen years shall be counted in making such apportionment; and provided further. that if any asylum shall receive from any source the sum of

ten dollars per month for the support of any orphan or half-orphan, such orphan or half-orphan shall not be counted in making such apportionment.

SEC. 5. The money herein appropriated shall be paid upon the order of the governor.

SEC. 6. This act shall take effect from its passage.

An Act in relation to the care of orphan and abandoned children.

[Approved March 7, 1874; 1873-4, 297.]

Duty of managers of orphan asylums.

SECTION 1. It shall be the duty of the officers or managers of each and every orphan asylum in this state to publish, in January, April, July, and October in each year, in some newspaper of general circulation published in the county where such asylnm is situated, a notice giving:

1. The name, if known;
2. The age, as near as may be;
3. The sex; and,
4. Such other descriptions as would lead to identification of each child received into such asylum, either as an orphan or an abandoned child, since the last quarterly publication of a like notice.

Such notice must be published at least four times if in a weekly, and at least ten times consecutively if published in a daily newspaper. [*Amendment, approved February* 15, 1878; 1877-8, 82; *took effect from passage.*]

Penalty for abandonment.

SEC. 2. Any parent who shall knowingly and willfully abandon, or who, having the ability so to do, shall fail, neglect, or refuse to maintain his or her minor child under the age of fourteen years, shall be deemed guilty of a misdemeanor, and may be prosecuted and punished therefor, and shall forfeit the guardianship of such child. Any person who shall falsely, knowing the same to be false, represent to any manager, officer, or agent of any orphan asylum or charitable association for the care of orphans, that any child for whose admission into such asylum application is made, is an orphan, shall be deemed guilty of a misdemeanor, and punished accordingly.

What constitutes abandonment.

SEC. 3. Any parent or guardian who shall knowingly permit his or her child or ward to remain for the space of one year in any orphan asylum in this state, wherein such child shall be supported by charity, and who, during such period, shall fail or neglect to give notice in writing to the managers or officers of such asylum that he or she is such parent or guardian, shall be deemed to have abandoned, and shall forever forfeit all right to the guardianship, care, custody, and control of such child.

Guardianship.

SEC. 4. The officers or managers of the orphan asylum having any such abandoned child in its care shall have the preferred right to the guardianship of such child, and upon application to the courts in the manner prescribed by law, shall be duly appointed such guardians, and shall have letters of guardianship.

SEC. 5. This act shall take effect from and after its passage.

An Act to authorize the managers of orphan asylums to give their consent to the adoption of certain children under their care.

[Approved April 1, 1878; 1877-8, 963.]

This act is given in full in Civil Code, sec. 265.

An Act to appropriate money for the support of orphans, half-orphans, and abandoned children.

[Approved March 25, 1880; 1880, 13 (Ban. ed. 48).]

Appropriation.

SECTION 1. There is hereby appropriated out of any money in the state treasury not otherwise appropriated, to each and every institution in this state conducted for the support and maintenance of minor orphans, half-orphans, or abandoned children, and to each and every county, city and county, city, or town maintaining such orphans, half-orphans, or abandoned children, or any or all of such classes of persons, aid as follows: For each whole-orphan supported and maintained in any such institution, the sum of one hundred dollars per annum; for each half-orphan supported and maintained in any such institution, the sum of seventy-five dollars per annum; for each abandoned child supported and maintained in any such institution, the sum of seventy-five dollars per annum; provided, such abandoned child shall have been an inmate thereof for one year prior to receiving any support as provided in this act.

How paid.

SEC. 2. The aid herein granted shall commence on the first Monday in July, eighteen hundred and eighty, and shall be paid in semi-annual installments, commencing on the first Monday in January, eighteen hundred and eighty-one.

Books to be kept.

SEC. 3. 1. It shall be the duty of every institution entitled to aid under this act to keep a book in which shall be entered the date of admission, name, age, sex, and place of birth of each and every orphan, half-orphan, and abandoned child who is and may hereafter be received or admitted in such institution, and the date of discharge of any such child, when such discharge is made, the parentage, if known, the estate, if any, to which the child is heir, and the insurance, if any, on father's or mother's life, so far as can be ascertained, the place where either parent or both died, nativity of the parents, where married, the marriage certificate, where recorded, when they came to California, or Nevada, place of residence in California, and habits of sobriety.

2. Every such institution shall also keep a book entitled "Monthly Accounts." In it shall be entered, on the debtor side, all the moneys received from any and all sources, segregated under the proper heads; on the credit side shall be entered all disbursements made, specifying for what purposes made, and the amount entered in detail so disbursed, segregated under their proper heads.

3. A pay-roll shall also be kept of the employees, and the amounts disbursed to each.

4. Every such institution shall also keep a book in which shall be entered in detail the amounts paid for the specific support of any orphan, half-orphan, or abandoned child, and the date of such payments.

5. A transcript of the books and pay-roll, verified under oath by the manager or person in charge of such institution entitled to or claiming state aid under this act, shall be made and forwarded to the state board of examiners at the time of making demand or presenting claim for state aid, covering the time for which such claim or demand for state aid is made.

6. Also, a list of all the inmates other than employees or orphans supported wholly or in part by any institution presenting a claim for state aid under this act shall be forwarded with such claim for aid.

7. These books shall be open at all times to the inspection of the state board of examiners, or by any person authorized by them to examine the same, or by any committee of the legislature, or clerk thereof, duly authorized so to do.

State board of examiners to inquire into management.

SEC. 4. The state board of examiners are authorized, in behalf of the state, at any time to inquire, either in person or by authorized agent, into the management of any such institution; and any institution refusing upon due demand to permit such inquiry shall not thereafter receive any aid under this act. All expenses incurred in visiting said asylums shall be audited and allowed by the state board of examiners out of the appropriations for the support of orphans, half-orphans, and abandoned children.

Claims to be audited and allowed, what to contain.

SEC. 5. Every claim for aid under this act shall be presented to and audited and allowed by the state board of examiners. Such claim shall contain:

1. The name and location of the institution making the claim;
2. The name of the person or persons having charge or control thereof;
3. The number of orphans, half-orphans, or abandoned children therein;
4. The date of admission and age of each;
5. The amount, if any, that the institution is receiving for the specific support of any orphan, half-orphan, or abandoned child therein.

Such claim, and the statements therein contained, shall be verified by the oath of the person or persons, or some of them, in charge of such institution, and the board of examiners may, in their discretion, require the production of the books of such institution in support of such claim.

Controller and treasurer, duties of.

SEC. 6. If such claim be audited and allowed, in whole or in part, by said board, it shall be the duty of the controller to draw his warrant for the amount thereof in favor of the person or persons in charge of such institutions, and it shall be the duty of the treasurer to pay the same on presentation.

Number of inmates necessary to claim support.

SEC. 7. In order that the provisions of this act shall not be abused, it is hereby declared:

1. That no institution which has less than twenty inmates of either or all of the classes mentioned in section one hereof shall be deemed an institution for the support and maintenance of minor orphans, half-orphans, or abandoned children, within the intent and meaning of this act;

2. That no child over the age of fourteen years shall be deemed a minor orphan, half-orphan, or abandoned child, within the intent and meaning of this act;

3. That no child for whose specific support there is paid to any such institution the sum of ten dollars or more per month shall be deemed a minor orphan, half-orphan, or abandoned child, within the intent and meaning of this act.

Appropriation, how expended.

SEC. 8. No money appropriated by the state to any institution claiming aid under this act shall be expended either in improvements or in the erection of new buildings by such institutions.

Provisions to include foundlings.

SEC. 9. The provisions herein made for the support of orphans, half-orphans, and abandoned children shall be held to include foundlings and other abanbonded infants who may have been or shall become the inmates of any regularly established foundling asylum, without regard to the time in which such infants have been inmates of such institutions; and the relief herein provided shall be given for any fraction of a year, pro rata; provided, also, that the limitation of twenty inmates, mentioned in section seven of this act, shall, in relation to said foundling asylum, be construed to mean not less than twenty admissions in the course of each year; and provided further, that for each abandoned or foundling infant who now is or shall become an inmate of such foundling asylum, there shall be paid by the state the sum of twelve dollars and fifty cents per month from the time of its entrance therein until such infant's decease, or become adopted, or reach the age of eighteen months, after which age such asylum shall receive the same sum for such infants as allowed for full orphans. [*New section added by amendment, approved March* 7, 1883; *Statutes* 1883, 57; *and taking effect immediately.*]

OYSTERS.

The Political Code, section 19, and the Penal Code, section 23, expressly continued in force an act concerning oysters, passed April 28, 1851, 432, and an act concerning oyster-beds, approved April 2, 1866, 1865–6, 848; but both those acts were repealed by the following act, which is now in force:

An Act to encourage the planting and cultivation of oysters.

[Approved March 30, 1874; 1873–4, 940.]

Planting oysters.

SECTION 1. Any citizen of the United States may lay down and plant oysters in any of the bays, rivers, or public waters of this state; and the ownership of and the exclusive right to take up and carry off the same shall be continued and remain in such person or persons who shall have laid down and planted the same.

Beds to be staked off.

SEC. 2. Any person or persons who now have or who may hereafter lay down and plant oysters, as hereinbefore provided, shall stake or fence off the land on which the same is or hereafter may be laid down and planted, and such stakes or fences shall be sufficient marks of the boundaries and limits, and entitle such person or persons to the exclusive use and occupation thereof for the purposes prescribed in this act; provided, that nothing herein contained shall be deemed to authorize any impediments or obstructions to the navigation of any channels.

Records.

SEC. 3. Parties planting or laying down such oyster-beds shall record a full description of said bed or beds in the county recorder's office in the county where the same is situated. The recorder shall record the description so furnished in a book to be kept by him for that purpose, to be entitled a "Record of Oyster-Beds."

Misdemeanor.

SEC. 4. Any person or persons who shall enter upon any lot of land in which there shall be oysters laid down and planted, and which at the time of such entry shall be fenced or staked off, pursuant to the provisions of this act, and who shall take up and carry off therefrom such oysters without the consent or permission of the occupants and owners thereof, and shall willfully

destroy or remove, or cause to be removed or destroyed, any stakes, marks, or fences, intended to designate the boundaries and limits of any land claimed and staked or fenced off, pursuant to the provisions of this act, shall be guilty of a misdemeanor.

Penalty.

SEC. 5. The penalties of the Penal Code relative to misdemeanors are hereby made applicable to any violation of the provisions of this act.

Fund.

SEC. 6. All fines and penalties collected for a violation of any of the provisions of this act, over and above the costs of suit, shall be paid into the common school fund of the county where the offense was committed.

Sign.

SEC. 7. All parties availing themselves of the provisions of this act shall erect, or cause to be erected, on some conspicuous part of the grounds devoted to the planting of oysters, a sign not less than six feet in length and one foot in width, on which shall be painted in black letters upon a white ground the words "oyster-beds."

Repealed.

SEC. 8. All acts and parts of acts in conflict with the provisions of this act, and especially an act entitled "An act concerning oysters," passed April twenty-eight, eighteen hundred and fifty-one, as also the act entitled "An act concerning oyster-beds," approved April second, eighteen hundred and sixty-six, are hereby repealed.

Construction.

SEC. 9. This act shall not apply to any tide-lands which the state may have sold to private parties; provided further, that nothing herein shall be so construed as to interfere with the right of the state to sell and dispose of any of the tide-lands, nor to affect in any manner the rights of purchasers at any sale of tide-lands by the state.

SEC. 10. This act shall take effect and be in force from and after its passage.

PARKS.

See ROADS AND HIGHWAYS.

An Act authorizing the commissioners of any public park in this state, and especially the park commissioners of Golden Gate park, in San Francisco, to accept donations and bequests in aid of the improvement and embellishment of their respective parks, and to invest the funds derived therefrom.

[Approved March 9, 1885; 1885, 38.]

Donations.

SECTION 1. The commissioners of any public park in this state, and especially the park commissioners of Golden Gate Park, in the city and county of San Francisco, are hereby authorized and empowered to accept and receive donations and aid from individuals and corporations, and to receive legacies and bequests by the last wills and testaments of deceased persons, and especially to receive aid and contributions from that certain corporation organized and incorporated under the laws of the state of California, known as the Park Aid Improvement Company; and the moneys derived and to be derived therefrom shall be and are hereby recognized as a portion of the public funds belonging to said park commissioners, and applicable, under the direction of the said

park commissioners, to the purposes of preserving and embellishing the parks under their respective management and control.

Investing funds.

SEC. 2. If the funds derived as aforesaid shall at any time exceed in amount the sum necessary for immediate expenditure on the said park grounds, or if, in the judgment of the said park commissioners, it should be advisable to invest the same and make the same productive, the said park commissioners are hereby authorized to invest the same, or any portion thereof, in interest-bearing bonds of the government of the United States or of the state of California, and to use the interest and income thereof for the purposes aforesaid, with the like power to sell and dispose of the said bonds if, in their discretion, the principal thereof shall be necessary for the purposes aforesaid.

SEC. 3. This act shall take effect and be in force immediately.

PLACER COUNTY.

References to special and local acts.—Boundaries and seat of justice, 1851, 176.

Providing for organization, 1851, 516.

Concerning indebtedness of Sutter county chargeable to Placer county, 1852, 242.

Fixing salary of county judge, 1853, 209; 1855, 195; 1857, 19; 1862, 477.

Authorizing court of sessions to reimburse W. D. Smith and I. A. Avery moneys expended in constructing wagon-road across the Sierra Nevada, 1854, 54.

Authorizing levy of special tax, 1856, 41; 1857, 15; 1862, 45.

Providing for maintenance of indigent sick, 1856, 60; 1857, 243; 1861, 265; 1862, 263.

Enabling taking and holding by county of stock in company to extend Sacramento Valley Railroad to Auburn, 1856, 130.

Concerning county officers, 1857, 4.

Concerning board of supervisors, 1857, 11, 153.

Concerning fees of county clerk, 1857, 176.

Fixing time of holding county court, 1857, 291.

Separating office of county recorder, county auditor, clerk of board of supervisors, and clerk of board of equalization, from office of county clerk, 1858, 19; 1861, 527.

Concerning office of county clerk, 1858, 29; 1863–4, 197.

Separating office of collector of taxes from offices of sheriff and assessor, 1858, 62.

Concerning official bonds of district attorney, surveyor, coroner, and public administrator, 1859, 70.

In relation to trial jurors in court of sessions and county court, 1859, 159; 1862, 247.

Concerning fees of public administrator, 1859, 234.

Changing term of holding court of sessions and county court, 1860, 34.

Legalizing official acts of H. B. Hawkins and J. T. Stewart as county clerks, 1860, 36.

Incorporating town of Auburn, 1860, 135, 162, 251.

Authorizing American River Water and Mining Company to take, use, and hold certain land, 1860, 155.

Authorizing Auburn to take and subscribe fifty thousand dollars to stock of Sacramento, Placer, and Nevada Railroad Company, etc., 1860, 254.

Enabling county to subscribe for stock to Sacramento, Placer, and Nevada Railroad to Eastern Extension Railroad, and to assist in constructing certain wagon-roads, 1860, 344.

Concerning roads and highways, 1860, 359; 1861, 253; 1862; 355; 1863, 100; 1863–4, 255, 449.

Changing venue in case of Horace Smith, 1861, 47.

Concerning office of tax collector, 1861, 150.

Authorizing J. Atkinson to remove remains of deceased persons, 1861, 167.

Authorizing G. Bewel to remove remains of deceased persons, 1861, 238.

Authorizing removal of human remains, 1862, 11.

Concerning roads and streets in Auburn, 1862, 18.

Authorizing county to loan credit to Sacramento, Placer, and Nevada Railroad, to amount of one hundred thousand dollars, 1862, 120, 549.

Providing for collection of delinquent taxes, 1862, 253.

Granting right to keep and maintain bridge across North fork of American river, near Carolton, 1862, 273.

Granting right of way to construct toll-bridge across Bear river, at McCourtney's crossing, 1862, 437, 560.

Granting right to construct and maintain toll-bridge across American river, near Rattlesnake bar, 1863, 142.

Authorizing county to subscribe to stock of Central Pacific Railroad Company, 1863, 145.

For better protection of county treasury, 1863, 173.

Incorporating town of Dutch Flat, 1863, 255.

Making appropriation for payment of expenses growing out of indictment and trial of Horace Smith, 1863, 301.

Authorizing board of supervisors to purchase or construct a county hospital, 1863, 304.

Authorizing supervisors to audit and allow claim of G. L. Anderson, 1863, 332.

Authorizing county to appropriate moneys for support of county agricultural association, 1863, 358.

Relative to election of district tax collectors and assessors, 1863, 406.

Concerning records and papers in office of county clerk, 1863, 746.

Authorizing county treasurer to transfer money from general fund to school fund, 1863, 768.
Legalizing certain records in recorder's office, 1863–4, 84.
Fixing salary of superintendent of common schools, 1863–4, 86.
In regard to holding terms of county court, 1863–4, 113.
Authorizing board of supervisors to levy special poll-tax for county purposes, 1863–4, 116.
To legalize official bond of J. W. Dickinson, treasurer, 1863–4, 450.
Authorizing board of supervisors to appropriate money from general fund (for repairs of hospital building), 1863–4, 258.
Dividing county into supervisor and revenue districts, providing for election of supervisors, assessors, and tax collectors, etc., 1863–4, 291.
Conferring certain powers (to audit and allow account of Dr. S. P. Thomas) on board of supervisors, 1863–4, 472.
Support of common schools and indigent sick in, 1865–6, 35.
To divide into districts, 1865–6, 54.
Exempted from act incorporating canal companies, 1865–6, 53.
To divide into revenue districts, 1865–6, 54.
Fees and mileage of jurors, 1865–6, 131.
Boundaries defined, 1865–6, 223; 1869–70, 294.
To prevent stallions from running at large, 1865–6, 327; 1867–8, 70; 1869–70, 68.
District attorney, act concerning, 1865–6, 352.
Protection of treasury, 1865–6, 590.
To subscribe to Central Pacific Railroad Company, 1865–6, 628; 1869–70, 866.
Exempted from provisions of road law, 1865–6, 381.
Roads and highways, 1865–6, 670; repealed so far as it conflicts with act of 1870, 457.
Franchise to Cave valley turnpike, 1865–6, 488.
To levy special poll-tax, 1867–8, 96, 609.
Public and private roads, 1867–8, 158; 1869–70, 231.
For the preservation of trout, 1867–8, 460.
To provide for transfer of funds, 1867–8, 477; 1869–70, 807.
To pay claim of W. W. Price, 1867–8, 503.
Incorporation act of Auburn, 1867–8, 555.
Concerning foreign miners' license, 1867–8, 563.
Terms of county and probate courts, 1867–8, 688.
For relief of W. D. Perkins, 1869–70, 56.
To create bridge fund, 1869–70, 60.
To legalize name of Lake Bigler, 1869–70, 64.
Assessment and collection of taxes, 1869–70, 110.
Fees and salaries, 1869–70, 184.
Act in relation to herding sheep, 1869–70, 304.
Extending authority of district attorney, 1869–70, 367.
Concerning roads and highways, 1869–70, 457.
Office of clerk of boards of supervisors and equalization, 1869–70, 576.
Concerning road fund of certain districts, 1869–70, 580.
Franchise to Donner Lumber and Boom Company, 1869–70, 771.
To regulate fees of justices and constables, 1869–70, 805.
Transfer of money to railroad fund, 1869–70, 807.
Supervisors to dispose of railroad stock, 1869–70, 866.
Additional notaries public, 1871–2, 33.
Repealing special road law, 1871–2, 47.
Location and construction of public roads and highways, 1871–2, 142.
For assessment and collection of taxes, 1871–2, 171.
For protection of game, 1871–2, 433.
Salary of district attorney, 1871–2, 653.
Concerning district tax collectors, 1871–2, 656.
In second congressional district, 1871–2, 714.
In relation to fees of district attorney, 1871–2, 799.
In relation to herding of sheep, 1871–2, 890.
Reorganizing board of supervisors, 1873–4, 347, 775; 1875–6, 573.
In twenty-second senatorial district, 1873–4, 369.
For railroad from Colfax to Nevada City, 1873–4, 492.
To fix salary of recorder, 1873–4, 702.
Consolidating offices of sheriff and tax collector, 1873–4, 709.
Exempting firemen from poll-tax, 1873–4, 731; 1875–6, 287.
Location and maintenance of roads and highways, 1873–4, 833.
Transfer of certain road moneys, 1875–6, 16.
Concerning roads and highways, 1875–6, 413.
To prevent trespassing of animals in judicial townships numbers 1 and 10, 1875–6, 452.
Concerning certain taxes (compromise with Central Pacific Railroad Company), 1875–6, 621.
To prevent hogs and goats running at large, 1875–6, 644.
Concerning hogs running at large, 1875–6, 797.
To consolidate Rattlesnake school district with Wild Goose school district in El Dorado county, 1875–6, 801.
Repealing act for destruction of certain wild animals, 1877–8, 2.
Concerning hogs and goats in Rocklin precinct, 1877–8, 85.
Concerning roads and highways, 1877–8, 115.
Regulating powers of supervisors (employment of attorney), 1877–8, 197.
Regulating fees of county recorder, 1877–8, 268.
Respecting the county hospital, 1877–8, 297.
Reimbursing county for expenses in collecting state taxes, 1877–8, 331.
Concerning hogs running at large, 1877–8, 640.
For construction of railroad from Tahoe city to Truckee, 1877–8, 698.
Organizing a levee district (Bear River District No. 1), 1877–8, 732.
For preservation of fish in Lake Bigler, 1877–8, 746.

PLUMAS COUNTY.

References to special and local acts.—Boundaries, 1854, 8; 1860, 339; 1863–4, 264; 1865–6, 605; 1867–8, 462.
Seat of justice, 1854, 8.
Organizing Plumas county out of a portion of Butte county, 1854, 8; 1857, 92.

Giving jurisdiction to courts in certain cases (arising before organization of county), 1854, 232.

Concerning county judge, 1856, 106, 92, 252.

Providing for construction of wagon-road from Oroville to proposed National wagon-road, 1857, 291.

Fixing time of holding court of sessions and county court, and changing manner of summoning jurors for county court, 1858, 96.

Authorizing board of supervisors to levy special tax for building purposes, 1859, 2; 1861, 115.

Changing time of assessing value of real and personal property, and collecting taxes, etc., 1859, 317; 1860, 7.

Concerning roads and highways, 1859, 368; 1863, 533.

Extending time for collecting taxes, 1860, 42; 1861, 37.

Legalizing assessment roll in 1859, 1860, 153.

Providing for settling boundary lines between Plumas and Sierra and Shasta counties, 1860, 339.

Relating to sureties on official bond of T. J. Miller, late county treasurer, 1861, 516.

Authorizing administratrix of Christopher Myers, deceased, to dispose of real estate, 1862, 169.

To better define the boundaries of Sierra county, etc., and to legalize certain civil actions determined and pending in Sierra and Plumas counties, 1863, 114.

Authorizing J. Bidwell and others to construct wagon-road, 1863, 291; 1863–4, 185.

Authorizing board of supervisors to levy special tax for certain purposes (special franchise fund), 1863, 484.

Creating Lassen county, 1863–4, 264.

Roads and highways, 1865–6, 31, 664; 1869–70, 396.

Exempted from act incorporating canal companies, 1865–66, 604; 1867–8, 134.

Wagon-road franchise to Greenville, 1865–6, 285.

Exempted from provisions of road law, 1865–6, 381.

Franchise to J. C. Church and others for wagon-road from La Porte to Quincy, 1865–6, 490.

Franchise for wagon-road to Beckwith Pass, 1865–6, 491.

To issue bonds in aid of certain wagon-roads, 1865–6, 591.

Boundary line, 1865–6, 605; 1867–8, 462.

For relief of W. L. Bradford, 1865–6, 620.

County auditor's salary, state portion, 1865–6, 834.

Act concerning jurors, 1867–8, 39.

Indigent sick, 1867–8, 58.

Relief of J. H. Gates, 1867–8, 58.

Public and private roads, 1867–8, 158; 1869–70, 231.

Fees and salaries, 1867–8, 448; 1869–70, 148.

To subscribe to Oroville and Virginia City Railroad, 1867–8, 630; 1869–70, 102.

To prevent stallions from running at large, 1869–70, 68.

To build certain wagon-roads, 1869–70, 214.

Terms of district court, 1869–70, 576.

Franchise to J. Bidwell and others of wagon-road, 1869–70, 621.

For the protection of game, 1869–70, 853.

Wagon-road franchise to Bidwell and others, 1869–70, 621.

Concerning roads and highways, 1871–2, 65.

To increase number of notaries public, 1871–2, 304.

To raise revenue for hospital and other purposes, 1871–2, 321.

Salary of district attorney, 1871–2, 654, 733.

In third congressional district, 1871–2, 714.

To complete Red Clover valley wagon-road, 1871–2, 769.

To protect fish, 1871–2, 794; 1873–4, 154; 1875–6, 725.

Repealing special road law, 1873–4, 306.

Granting Sierra Iron Company right to construct road, 1873–4, 341.

In twenty-sixth senatorial district, 1873–4, 369.

Regulating fees of tax collector, 1873–4, 382

In relation to roads, 1875–6, 6.

To fund certain indebtedness, 1875–6, 7.

Concerning hogs running at large, 1875–6, 797.

Authorizing Quincy school district to issue bonds for building purposes, 1875–6, 847.

To provide for payment of certain road bonds, 1877–8, 67.

For construction of wagon-road from Mohawk valley to Sardine creek in Sierra county, 1877–8, 453.

In relation to certain officers and their compensation, 1877–8, 547.

Concerning hogs running at large, 1877–8, 640.

POISONS.

See MEDICINE.

RAILROADS.

The Political Code, sec. 19, expressly continued in force two acts entitled as follows:

An act to empower the board of supervisors of the several counties of the state to aid in the construction of a railroad in their respective counties, approved April 4, 1870; 1869–70, 746.

An act supplemental to the foregoing act of April 4, 1870, approved April 4, 1870; 1869–70, 744.

At the next session of the legislature these acts were repealed as to all the counties of the state except San Francisco, Santa Cruz, San Diego, Santa Barbara, San Luis Obispo, San Bernardino, Marin, and Los Angeles, by—

An act to repeal the acts above named of April 4, 1870, except as to certain counties therein named, approved March 21, 1872; 1871–2, 444.

Afterwards, at the session of the legislature of 1873–4, all the above-mentioned acts were entirely repealed by—

An act to repeal certain acts herein named, known as the "five-per-cent subsidy acts," approved January 14, 1874; 1873–4, 26.

All the legislation in reference to the Pacific

railroads up to 1865 will be found collated in the General Laws, secs. 4790 et seq., and Supplement, sec. 9036. Since the publication of those volumes, various special acts in reference to the Pacific railroads, and various acts granting rights and privileges to railroads within the state have been passed, which will be found referred to under the heads of the counties in which or through which the roads run.

ROADS AND HIGHWAYS.

See PARKS.

The Political Code, secs. 2618 et seq., contains the general road law of the state. And section 2 of the highway act of 1883 (see Pol. Code, sec. 2744, note), and all laws in conflict with that act, were repealed. But by section 2757 of that code, as originally adopted, the provisions of any statute then in force in any of the counties, in relation to roads and highways, were not to be affected by the code except when such special laws should be repealed, in which case the provisions of the code were to apply.

All the special road laws affecting the various counties will be found referred to under the names of the respective counties. Those which had been passed previous to 1865 were collated in the General Laws, secs. 6542 et seq. Those passed between 1864 and 1871 are referred to in the Supplement, secs. 9337 et seq. Those passed since 1870 may be here referred to, as supplementary to the lists given in the General Laws and Supplement.

For the Vrooman act, the act entitled "An act to provide for the improvement of streets, lanes, alleys, courts, places, and sidewalks, and the construction of sewers within municipalities," approved March 6, 1883, see Stats. 1883, 32. This act was repealed by an act approved March 18, 1885; 1885, 147. See the full text of this act in Political Code, following sec. 4409.

Alameda county.—An act to amend an act concerning roads and highways in the county of Alameda, approved March 24, 1862, approved March 6, 1872; 1871-2, 247.

An act to amend the same act of March 24, 1862, approved March 23, 1872; 1871-2, 534.

An act to amend the foregoing-mentioned act of March 23, 1872, approved April 1, 1872; 1871-2, 895.

Amador county.—An act to repeal certain acts in relation to roads in Amador county; also an act relative to the treatment and care of the indigent sick of said county, approved March 18, 1874; 1873-4, 444.

Butte county.—An act concerning roads in the county of Butte, approved March 12, 1872; 1871-2, 322; amended March 28, 1872; 1871-2, 693.

An act concerning roads in the county of Butte, approved March 20, 1874; 1873-4, 503.

An act to provide for the payment of the debt due upon the road fund of Butte county, approved March 27, 1876; 1875-6, 492.

An act in relation to roads and highways in the county of Butte, approved April 3, 1876; 1875-6, 752.

Calaveras county.—An act to provide for the location, construction, and maintenance of public roads in the county of Calaveras, approved February 28, 1872; 1871-2, 160.

An act for the repeal of the special road law of Calaveras county (and making the provisions of the code applicable), approved March 13, 1874; 1873-4, 358.

Colusa county.—An act to provide for the location, construction, and maintenance of public roads in the county of Colusa, approved April 1, 1872; 1871-2, 826.

An act to provide for establishing, maintaining, and protecting public and private roads in the county of Colusa, approved March 26, 1874; 1873-4, 621; amended March 23, 1876; 1875-6, 401; amended March 25, 1876; 1875-6, 481.

Contra Costa county.—An act concerning roads and highways in Contra Costa county, approved March 30, 1872; 1871-2, 779.

An act to repeal all special road laws in the county of Contra Costa (and make provisions of code applicable), approved February 27, 1874; 1873-4, 170.

An act concerning roads and highways in Contra Costa county, approved March 11, 1876; 1875-6, 237.

Del Norte county.—An act to amend an act concerning roads and highways in the counties of Klamath and Del Norte, approved March 31, 1866; approved March 30, 1872; 1871-2, 760.

An act to amend above-mentioned act of March 31, 1866, approved February 6, 1874; 1873-4, 81.

An act to repeal all special road laws now in force and relating to the county of Del Norte, approved March 18, 1876; 1875-6, 335.

El Dorado county.—An act concerning roads and highways in the county of El Dorado, approved March 15, 1872; 1871-2, 372; amended March 28, 1874; 1873-4, 771.

Fresno county.—An act concerning roads and highways in the county of Fresno, and to repeal a certain act in relation thereto, approved March 30, 1872; 1871-2, 704.

An act to apply certain provisions of the Political Code to the county of Fresno, approved February 27, 1874; 1873-4, 178.

An act to repeal all special road laws in the county of Fresno (and make provisions of code applicable), approved March 11, 1874; 1873-4, 342.

Humboldt county.—An act concerning roads in the county of Humboldt, approved February 14, 1872; 1871-2, 105; amended February 17, 1874; 1873-4, 103.

An act to provide for the construction of certain wagon-roads in the county of Humboldt, approved February 28, 1874; 1873-4, 181; supplemented March 27, 1874; 1873-4, 720.

An act to provide for the construction and completion of certain wagon-roads in the county of Humboldt, approved February 12, 1876; 1875-6, 47.

An act concerning roads in the county of Humboldt, approved March 25, 1876; 1875-6, 477.

Inyo county.—An act to provide for the improvement of the public roads in the county of Inyo, approved March 23, 1876; 1875-6, 421.

Kern county.—An act to change the road

law of Kern county, approved March 7, 1874; 1873-4, 299.

Klamath county.—An act to amend an act concerning roads and highways in the counties of Klamath and Del Norte, approved March 31, 1866, approved March 30, 1872; 1871-2, 760.

An act to amend the above-mentioned act of March 31, 1866, approved February 6, 1874; 1873-4, 81.

Lake county.—An act to repeal an act relating to public roads in Lake county, approved March 31, 1866; approved March 27, 1874; 1873-4, 714.

An act to provide for the payment of certain bonds of the county of Lake, approved March 28, 1874; 1873-4, 764.

An act concerning roads and highways in Lake county, approved March 21, 1876; 1875-6, 385.

Lassen county.—An act concerning roads and highways in the counties of Plumas and Lassen, approved February 3, 1872; 1871-2, 65.

An act to repeal the above-mentioned act of February 3, 1872, approved March 7, 1874; 1873-4, 306.

An act concerning public roads in Lassen county, approved March 29, 1876; 1875-6, 539; supplemented April 3, 1876; 1875-6, 858.

Los Angeles county.—An act relative to highways in Los Angeles county, approved February 8, 1876; 1875-6, 30.

Marin county.—An act supplementary to and amendatory of an act to authorize the board of supervisors of Marin county to issue and sell bonds of said county and apply the proceeds thereof to the construction of wagon-roads in said county, approved March 4, 1870, approved January 18, 1872; 1871-2, 23.

An act amendatory of and supplemental to an act concerning roads in the county of Marin, approved March 30, 1868, approved March 23, 1872; 1871-2, 524.

An act to repeal the foregoing-mentioned acts of March 30, 1868, March 23, 1872, and others, approved December 19, 1873; 1873-4, 5.

An act in relation to suits brought against the county of Marin for damages on account of laying out public roads, approved March 30, 1874; 1873-4, 815.

An act to prevent stock from running at large upon the roads and highways in the county of Marin, approved March 25, 1876; 1875-6, 482.

Mariposa county.—An act to provide for the maintenance and construction of roads and highways in the county of Mariposa, approved March 31, 1876; 1875-6, 650.

Mendocino county.—An act to authorize the board of supervisors of Mendocino county to issue bonds of said county and apply the same to the construction of wagon-roads in said county, approved February 20, 1872; 1871-2, 125; supplemented March 12, 1872; 1871-2, 327.

An act to amend an act concerning roads and highways in the county of Mendocino, approved March 28, 1868; amended February 19, 1870; approved February 21, 1872; 1871-2, 131.

An act to repeal all special road laws in Mendocino county, approved March 13, 1874; 1873-4, 359.

An act to authorize the board of supervisors of Mendocino county to issue bonds for the construction of wagon-roads in said county, approved March 18, 1874; 1873-4, 425.

An act to provide for the purchase and erection of certain bridges, and for the building and improvement of certain roads in the county of Mendocino, approved March 20, 1876; 1875-6, 376.

Merced county.—An act to repeal an act for the establishment, maintenance, and protection of public and private roads in Merced county, approved March 13, 1866, approved January 9, 1874; 1873-4, 22.

Monterey county.—An act concerning public roads and highways in the county of Monterey (and making the provisions of the code applicable), approved March 7, 1874; 1873-4, 307.

Napa county.—An act amendatory of and supplementary to an act to provide for the establishment and maintenance of public roads in Napa county, approved March 31, 1866, approved March 24, 1874; 1873-4, 551.

An act supplementary to and amendatory of the foregoing act, approved March 30, 1876; 1875-6, 571.

Nevada county.—An act to provide for the location, construction, and maintenance of public roads in the county of Nevada, approved March 21, 1872; 1871-2, 448; amended March 6, 1874; 1873-4, 293; amended March 23, 1876; 1875-6, 423.

Placer county.—An act to repeal an act concerning roads and highways in the county of Placer, approved March 29, 1870, approved February 1, 1872; 1871-2, 47.

An act to provide for the location, construction, and maintenance of public roads and highways in the county of Placer, approved February 24, 1872; 1871-2, 142.

An act to provide for the location and better maintenance of roads and highways in the county of Placer, approved March 30, 1874; 1873-4, 833.

An act concerning roads and highways in the county of Placer, approved March 23, 1876; 1875-6, 413.

Plumas county.—An act concerning roads and highways in the counties of Plumas and Lassen, approved February 3, 1872; 1871-2, 65.

An act to repeal the foregoing-mentioned act of February 3, 1872, approved March 7, 1874; 1873-4, 306.

An act in relation to roads in Plumas county, approved January 20, 1876; 1875-6, 6.

Sacramento county.—An act to amend an act concerning roads and highways in the county of Sacramento, approved April 2, 1870, approved March 30, 1872; 1871-2, 702.

An act relating to streets and roads in the city and county of Sacramento, approved March 27, 1874; 1873-4, 728; amended March 15, 1876; 1875-6, 303.

An act in relation to public roads in the county of Sacramento, approved April 1, 1876; 1875-6, 658.

San Bernardino county.—An act to make the provisions of the Political Code concerning highways applicable to San Bernardino county, approved February 15, 1876; 1875-6, 57.

San Diego county.—An act to amend an act concerning public roads and highways in the counties of Santa Cruz and San Diego, approved March 21, 1870, approved March 23, 1872; 1871-2, 528.

San Francisco city and county.—An act to provide for the repair and improvement of roads and highways in the city and county of

San Francisco, approved April 1, 1872; 1871-2, 901.

San Joaquin county.—An act to authorize road districts in San Joaquin county to levy a special tax, approved March 27, 1872; 1871-2, 627.

An act concerning roads and highways in the county of San Joaquin, approved March 18, 1876; 1875-6, 341.

San Luis Obispo county.—An act to provide road funds for the counties of Santa Barbara and San Luis Obispo, approved February 13, 1872; 1871-2, 89.

An act concerning roads in the counties of Santa Barbara and San Luis Obispo, approved February 21, 1872; 1871-2, 134; amended March 28, 1872; 1871-2, 690.

An act to repeal the foregoing act of February 21, 1872, approved January 21, 1874; 1873-4, 30.

An act to provide road funds for the counties of San Luis Obispo and Santa Barbara, approved March 18, 1874; 1873-4, 436; amended and supplemented by act approved March 20, 1876; 1875-6, 358.

An act to provide funds for road purposes in the county of San Luis Obispo, approved April 3, 1876; 1875-6, 907.

San Mateo county.—An act to provide funds for the construction and improvement of highways in the county of San Mateo, approved March 8, 1872; 1871-2, 297.

An act to amend an act concerning roads and highways in the county of San Mateo, approved March 25, 1868, approved March 10, 1872; 1871-2, 427.

An act to repeal the special road laws of San Mateo county, approved January 12, 1874; 1873-4, 23.

An act to prescribe the duties and provide the salary of certain officers of San Mateo county, to authorize the issue of bonds for road purposes, and other matters relating thereto, approved March 18, 1874; 1873-4, 479.

Santa Barbara county.—The special road laws since 1870 of this county are given above under the head of San Luis Obispo county.

An act to create a special road district in the county of Santa Barbara, and to provide a road fund for said district, approved March 27, 1876; 1875-6, 494.

An act to repeal an act to provide road funds for the counties of San Luis Obispo and Santa Barbara, approved March 18, 1874, approved March 29, 1876; 1875-6, 530.

Santa Clara county.—An act to amend an act concerning roads and highways in the county of Santa Clara, approved March 31, 1866, and to repeal an act to amend said above-mentioned act, approved March 14, 1868, approved March 23, 1872; 1871-2, 517.

An act to repeal the several special road laws in the county of Santa Clara, in the state of California, approved February 7, 1874; 1873-4, 87.

An act concerning roads and highways in the county of Santa Clara, approved March 18, 1874; 1873-4, 453; amended March 9, 1876; 1875-6, 167; amended March 31, 1876; 1875-6, 606.

An act to protect the public roads in Santa Clara county, approved March 13, 1876; 1875-6, 250.

Santa Cruz county.—An act to provide for the condemnation of lands for road purposes in the county of Santa Cruz, approved March 16, 1872; 1871-2, 397.

An act to amend an act concerning public roads and highways in the counties of Santa Cruz and San Diego, approved March 21, 1870, approved March 23, 1872; 1871-2, 528.

An act to establish and maintain public and private roads in the county of Santa Cruz, approved March 31, 1876; 1875-6, 611.

Shasta county.—An act supplementary to an act concerning roads and highways in the counties of Shasta and Trinity, approved March 28, 1863, approved March 4, 1872; 1871-2, 239; amended March 13, 1876; 1875-6, 248.

An act relative to roads and highways in the county of Shasta, approved March 30, 1874; 1873-4, 844.

An act to repeal all special laws in relation to roads and highways in the county of Shasta, approved April 1, 1876; 1875-6, 803.

Sierra county.—An act supplemental to an act for the maintenance of public roads and trails in the county of Sierra, approved February 9, 1866, approved March 4, 1872; 1871-2, 235.

An act to repeal an act concerning roads and highways in the county of Sierra, approved March 25, 1870, approved March 27, 1872; 1871-2, 584.

An act to repeal an act to provide for the maintenance of public roads and trails in the county of Sierra, approved February 9, 1866, approved February 27, 1874; 1873-4, 181.

An act relating to road districts and road overseers in the county of Sierra, approved March 23, 1876; 1875-6, 405.

Solano county.—An act to authorize the board of supervisors of Solano county to levy an additional road tax, approved December 29, 1871; 1871-2, 4.

An act to authorize the board of supervisors of Solano county to levy a road tax, approved March 30, 1874; 1873-4, 868.

An act in relation to highways in the county of Solano, approved March 16, 1876; 1875-6, 316; supplemented April 1, 1876; 1875-6, 817.

Sonoma county.—An act concerning roads and highways in Sonoma county, approved March 23, 1872; 1871-2, 496; supplemented February 17, 1874; 1873-4, 105; amended March 28, 1874; 1873-4, 762; repealed in part, February 14, 1876; 1875-6, 53.

An act concerning roads and highways in the county of Sonoma, approved March 13, 1876; 1875-6, 270.

Stanislaus county.—An act to repeal an act concerning roads and highways in the county of Stanislaus, approved March 10, 1866, approved January 9, 1874; 1873-4, 22.

Sutter county.—An act to repeal an act concerning roads and highways in the county of Sutter, approved March 29, 1870, approved March 11, 1874; 1873-4, 338.

An act concerning roads and highways in the county of Sutter, approved March 24, 1874; 1873-4, 573.

Trinity county.—An act supplementary to an act concerning roads and highways in the counties of Shasta and Trinity, approved March 28, 1863, approved March 4, 1872; 1871-2, 239; amended March 13, 1876; 1875-6, 248.

An act to authorize and empower the board of supervisors of the county of Trinity to fix the rate of tolls to be charged on certain wagon-roads, approved March 25, 1874; 1873-4, 607.

Tulare county.—An act to provide for the location, construction, and maintenance of pub-

lic roads in the county of Tulare, approved March 6, 1874; 1873-4, 283.

An act to amend the foregoing act, approved January 27, 1876; 1875-6, 11.

An act to repeal foregoing act of March 6, 1874, and to make applicable to said county certain provisions of the Political Code, approved March 29, 1876; 1875-6, 531.

Tuolumne county.—An act to amend an act amendatory of and supplementary to an act concerning roads and highways in the county of Tuolumne, approved February 27, 1866, approved April 2, 1870, approved March 1, 1872; 1871-2, 185.

Yolo county.—An act concerning roads and highways in the county of Yolo, approved March 20, 1874; 1873-4, 490.

Yuba county.—An act concerning roads and highways in the county of Yuba, approved February 3, 1872; 1871-2, 72.

An act to authorize the county of Yuba to issue sixty thousand dollars of bonds for the purpose of constructing, repairing, and improving wagon-roads and bridges in said county of Yuba, approved March 28, 1872; 1871-2, 662.

An act to repeal an act concerning roads and highways in the county of Yuba, approved February 3, 1872, approved December 23, 1873; 1873-4, 11.

RODEOS.

The Political Code, sec. 19, and the Penal Code, sec. 23, continued in force all acts regulating and in relation to rodeos. They are as follows:

An Act to regulate rodeos.

[Passed April 30, 1851, 445.]

General rodeos.

SECTION 1. Every owner of an uninclosed stock farm shall be obliged to give, yearly, one general rodeo within the limits of his farm, between the first day of April and the thirty-first day of July, in the counties of San Luis Obispo, Santa Barbara, and San Diego, and in the remaining counties between the first day of March and the thirty-first day of August; and the person giving such general rodeos shall give notice thereof to all the owners of adjoining farms, at least four days previous to said rodeos being made, in order that parties interested may meet for the purpose of separating their respective cattle, it being understood that this requisite will be complied with by giving verbal notice to the owners of such adjoining farms, or by leaving a notice at their respective farm residences with any servant or member of the family; provided, that in the county of Monterey, the board of supervisors shall prescribe and regulate the time and manner of giving rodeos in said county. [*Amendment, approved April* 17, 1861, 180; *took effect from passage.*]

The original section was previously amended by act of March 26, 1852, 102.

Penalty for neglect in certain counties.

SEC. 2. If any person required to give such general rodeos, by the provisions of this act, shall neglect or refuse to do so, or willfully neglect to collect any portion of his stock, any adjoining stock farmer shall have power to give such rodeos, and the person so neglecting or refusing shall pay the cost of the same. In this case, the person giving such rodeos shall give notice, as required by section one; provided, that in the counties of San Luis Obispo, Santa Barbara, Los Angeles, San Bernardino, and San Diego, if said general rodeos be not given before the fifteenth day of May, a judge of the plains of said county may give such rodeo, at the cost of the party so neglecting or refusing to give such rodeo, after five days' written or verbal notice to the neighbors. [*Amendment, approved March* 17, 1858, 70.]

The foregoing amendment does not apply to the counties of Monterey, Santa Cruz, Merced, Stanislaus, Contra Costa, Sonoma, Mendocino, Santa Clara, Solano, Yolo, Napa, San Joaquin, and San Mateo, in which counties the section as amended by act of March 26, 1852, 102, is in force as follows:

SEC. 2. If any person required to give such general rodeos, by the provisions of this act, shall neglect or refuse to do so, or willfully neglect to collect any portion of his stock, any adjoining stock farmer shall have power to

give such rodeos, and the person so neglecting or refusing shall pay the cost of the same; in this case, the person giving such rodeos shall give notice as required in section one. [*Amendment, approved March* 26, 1852, 102.]

Exempt during certain months.

SEC. 3. No owner of a stock farm shall be required to give a rodeo from the first day of November to the first day of March, in each year, except on a contract for the delivery of cattle, or on a legal demand from the sheriff or constable of his county, having an execution against the owner, and demands a rodeo for levy or delivery of cattle; but in other months of the year he shall be required to collect his cattle upon application of owners of cattle; provided good cause is shown, and the party applying for the rodeo pay the expenses thereof. [*Amendment, approved March* 26, 1852, 102.]

Cattle collected at rodeos may be examined.

SEC. 4. When the cattle comprising such general rodeo shall be collected together, any stock owner, or his agent, shall have the privilege of examining to his satisfaction the cattle so congregated, and to separate such as belong to him. The cattle so gathered together shall not be allowed to disperse until all the adjoining farmers have had sufficient time to separate the cattle belonging to them; provided, that said rodeo may be continued from day to day until such separation shall be completed.

Cattle may be branded within eight days of rodeo.

SEC. 5. The requirements of the foregoing section being complied with, the owner of the rodeo may proceed to mark and brand his cattle within eight days from the time of such rodeo; but if he should suspend his marking and branding for more than fifteen days, he shall be obliged to give a new general rodeo, in the same manner as the former one, it being understood that in all cases he shall be obliged to mark his cattle some time within the period designated in the first section, unless the majority of the adjoining proprietors should grant him longer time.

Disputes respecting cattle, how disposed of.

SEC. 6. Should any dispute arise between the owner of the rodeo, or any of the stock owners, or between any of the latter respecting cattle affairs, said dispute shall be decided by the judge or judges of the plains (jueces del campo), who may be present, or in case of their absence, by any three disinterested stock owners present, should the value in dispute not exceed fifty dollars.

Unmarked cattle, to whom deemed to belong.

SEC. 7. All unmarked neat cattle, the mothers of which are unknown, shall be considered the property of the owner of the farm on which they may be found.

No person to run cattle from one range to another in Merced and Stanislaus counties.

SEC. 8. No person shall be allowed at any time, or under any circumstances, to run cattle from without the boundaries of his own range, except after having given notice to, and received permission from, the person in charge of the range, where he may desire so to do; and whoever shall transgress this provision shall be liable, upon conviction thereof before any justice of the peace, to a penalty of not less than one hundred nor more than five hundred dollars, or to imprisonment for not less than three months nor more than six months, at the discretion of the justice. [*Amendment, approved April* 2, 1866; 1865–6, 673; *took effect from passage.*]

The foregoing amendment applies only to the counties of Merced and Stanislaus, leaving the original section in force in the other counties of the state as follows:

SEC. 8. No person shall be allowed at any time or under any circumstances to run cattle from without the boundaries of his own farm, except by permission of the person in charge of the farm where he may desire so to do; and whoever shall transgress this provision will be liable, upon conviction thereof, before any justice of the peace, to a penalty of not less than one hundred dollars nor more than five hundred dollars, or to imprisonment for not less than three months nor more than six months, at the discretion of the justice.

Cattle not to be marked at any other time than that before prescribed.

SEC. 9. No person shall be allowed to mark or brand any portion or the whole of his cattle at any other time or in any other manner than is prescribed in this act; and whoever shall act to the contrary will subject himself, on conviction before any justice of the peace, to a penalty of not less than one hundred dollars nor more than five hundred dollars, at the discretion of the justice.

Division.

SEC. 10. Every stock farm, the owner of which shall possess therein more than three thousand head of neat cattle, and not over six thousand, shall be allowed to divide said cattle into two rodeos, or if the number exceed six thousand head, into three rodeos, at each of which the provisions respecting general rodeos shall be complied with, and the whole number of these partial rodeos shall be considered as the general rodeo of such farm; provided, that such partial rodeos be given on successive days. [*Amendment, approved March* 17, 1858, 70.]

The act of March 17, 1858, 70, from which the foregoing amendment is taken, as well as the amendment of like date of section 2, does not apply to the counties mentioned under section 2. The original section is in force there as follows:

SEC. 10. Every stock farm, the owner of which shall possess therein more than three thousand head of neat cattle, and not over six thousand, shall be allowed to divide said cattle into two rodeos, or if the number exceed six thousand head, into three rodeos, at each of which the provisions respecting general rodeos shall be complied with, and the whole number of these partial rodeos shall be considered as the general rodeo of such farm; provided, that such partial rodeo be given within the period of fifteen days.

SEC. 11. This act to take effect from and after the first day of June, A. D. eighteen hundred and fifty-one.

Repealed as to Tulare county by special act of April 27, 1885, 163.

An Act supplemental to the foregoing act of April 30, 1851.

[Approved April 15, 1858, 155.]

Rodeo, before removal.

SECTION 1. Whenever the owner, agent of the owner, or parties in possession of any cattle or stock, shall desire to remove such cattle or stock from the range upon which they have been running for the space of one week or more, to another farm or range, thirty miles or more distant, they shall be required to give three days' notice to the neighbors having cattle or stock, before such removal, in order that said neighbors may get their cattle out; and shall be further required to give a general rodeo for that purpose.

Penalty.

SEC. 2. Any person failing or refusing to comply with the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof may be fined in any sum not less than fifty dollars nor more than five hundred dollars, and shall be liable to any party aggrieved in damages.

Disposition of fines.

SEC. 3. All fines collected under the provisions of this act shall be applied to the fund for the support and maintenance of the indigent sick in the counties in which such fines may be collected.

SEC. 4. This act shall take effect on the first day of May next.

An Act amendatory of and supplemental to the foregoing act of April 30, 1851.

[Approved April 2, 1866; 1865–6, 673.]

Section 1 contains the amendment of section 8 of the act of April 30, 1851, therein inserted.

Slaughtering unmarked cattle.

SEC. 2. It shall hereafter be unlawful for any person to kill or slaughter upon the plains, either in his own or any other range, any unmarked or recently marked neat cattle, calf, or other cattle; and any person violating the provisions of this section shall be liable, upon conviction thereof before any justice of the peace, to a penalty of not less than one hundred nor more than five hundred dollars, or by imprisonment for not less than three months nor more than six months, at the discretion of the justice.]

Possession of unmarked calves.

SEC. 3. Any person having possession of any unmarked calves which are not following their mothers, said calves having been taken from any other than his own range or a range of which he has charge, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace shall be liable to the penalty of not less than one hundred nor more than five hundred dollars, or to be imprisoned for not less than three nor more than six months, at the discretion of the justice.

Acts repealed.

SEC. 4. All acts or parts of acts in conflict with this act are hereby repealed.

Act to apply to certain counties only.

SEC. 5. This act shall apply only to the counties of Merced, Stanislaus, and Fresno.

SEC. 6. This act shall take effect and be in force from and after its passage.

An Act to repeal the foregoing amendatory and supplemental act of April 2, 1866.

[Approved March 30, 1874; 1873–4, 793.]

Repeal as to Fresno county.

SECTION 1. An act amendatory of and supplemental to an act regulating rodeos, passed April thirtieth, eighteen hundred and fifty-one, approved April second, eighteen hundred and sixty-six, is hereby repealed, so far as the same pertains to the county of Fresno.

SEC. 2. This act shall take effect immediately.

SACRAMENTO COUNTY AND CITY.

References to special and local acts.—For the purposes of more ready and convenient reference to the numerous acts of a special and local character relating to the county and to the city, and to the consolidated city and county of Sacramento, those more especially relating to "bridges," "capital of state," "levees and drainage," "roads and railroads," "school matters," "taxes," and "title to property" will be found noted under different subheads.

Boundaries and seat of justice, 1850, 61; 1851, 174; 1857, 132; 1861, 221; 1865–6, 223; 1869–70, 294.

Incorporating Sacramento city, 1850, 70, 96; 1851, 401.

Creating port-warden, 1850, 196; 1853, 46.

Second act incorporating city, 1851, 391; 1852, 194; 1853, 38; 1855, 63, 129; 1857, 265; 1858, 83, 289.

Authorizing court of sessions to borrow money, 1851, 447; 1852, 194.

Authorizing state controller to draw on county treasurer to defray contingent expenses of legislature, 1852, 58.

Creating state hospital in Sacramento, 1851, 500, 505; 1852, 142; 1853, 208, 267; 1854, 138.

Authorizing mayor and common council to

contract for supplying city with water, 1852, 196; 1858, 289.

Creating office of clerk of recorder's court of city, 1852, 197; 1855, 67.

Relative to port-warden, 1853, 44 (refers in repealing clause to 1850, 196; 1851, 423; 1852, 136).

Relating to fire companies, 1853, 60.

Providing for erection of jail, 1853, 116; 1854, 58.

Abolishing board of supervisors, 1853, 153, 181.

To fund floating debt of county and provide for payment, 1853, 212.

Providing for building and furnishing jail, 1854, 57; 1855, 22.

Authorizing mayor and common council to issue city bonds for payment of outstanding warrants and use of fire department, 1854, 60; 1858, 289.

To fund floating debt and provide for payment, 1854, 66.

Providing offices for certain county officers, 1854, 191.

Authorizing county to fund outstanding warrants drawn against court-house and jail fund, 1855, 20; 1857, 312.

Authorizing payment of rent for court-house, 1855, 102.

Authorizing working of convicts, 1855, 209.

Concerning office of public administrator, 1856, 80; 1858, 114, 297; 1859, 24, 96, 234.

Regulating fire department, 1856, 126; 1858, 289.

For relief of Cyrus Rowe as county treasurer, and his sureties, 1856, 225.

Fixing time of holding court of sessions and county courts, 1857, 98.

Authorizing county to fund outstanding warrants drawn on the several funds prior to November 1, 1855, 1857, 314.

To release B. S. Gray from liabilities as bail for G. W. Tenbrook, 1858, 82.

Auditing and allowing claim of Sacramento Gas Company, 1858, 124.

Consolidation act.—To repeal charter of 1851 and amendatory and supplemental acts, and to incorporate the city and county of Sacramento, 1858, 267; 1859, 41, 182, 359; 1861, 96, 171, 205, 226, 233, 262, 308, 542, 583, 586; 1863, 441, 517.

Submitting to people proposition to appropriate money for purchase and construction of suitable grounds and buildings for the use of state agricultural society, etc., 1859, 20.

Authorizing auditor and treasurer to transfer certain funds, 1859, 41 (refers to 1858, 279).

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SAN FRANCISCO CITY AND COUNTY.

References to special and local acts.—In the following enumeration of acts of a special and local character relating to the county, and to the city, and to the consolidated city and county of San Francisco, it has been deemed proper, for the purpose of facilitating reference, to group under distinct heads those more especially relating to Corporations, Companies, Societies, and Franchises; Courts and Jurors; Fire Department and Firemen; Funding Acts and Funds; Inspection Laws; Land Acts, Lands and Titles; Officers, Salaries and Fees; Personal Matters and Claims; Pilot, Port and Harbor Matters; Railroads and Marine Railways; Road Laws and Roads; Schools and Education; Streets and Street Improvements; Taxes and Assessments; Wharves and Bridges. Some of the acts, especially those conferring power upon the board of supervisors, which are generally known as "Omnibus Bills," embrace various different subjects, and must be examined for ascertainment of their complete scope. They will be found noted in the first group.

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To pay national guard for military duty, 1877–8, 686.

To provide for deficiency in street-department fund, 1877–8, 828.

Conferring further powers on supervisors (expenditures of various kinds), 1877–8, 829.

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For issue of bonds to relieve necessities of school department, 1877–8, 957.

For improvement of certain public reservations, 1877–8, 966.

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Repealing act for keeping clerk's office open on election days, 1880, 18 (Ban. ed. 62).

Amending act of 1870, concerning the law library, 1880, 40 (Ban. ed. 194).

Repealing act of April 1, 1878, conferring further powers on supervisors, 1880, 76 (Ban. ed. 264).

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Appropriating money for benefit of San Francisco Ladies' Protection and Relief Society, 1860, 80.

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Appropriating money for the benefit of the "Home for Care of Inebriates," 1861, 205.

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Authorizing C. S. Higgins and associates to lay down gas-pipes, 1861, 354.

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Granting right of way for telegraph to Crescent City, 1863, 707; 1863-4, 431.

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Authorizing Fast Freight and Express Company to change its principal place of business, 1863-4, 486.

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To empower the board of supervisors to set apart land for the use of the Seamen's Friend Society, and for the establishment of a Sailor's Home, 1865-6, 349.

To authorize Charles C. Butler and others to construct a wire-suspension bridge from the mainland to Seal Rock, 1865-6, 445.

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Authorizing transfer of causes from superior court, 1853, 34.

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To make treasurer ex officio tax collector, and recorder, auditor, 1873–4, 692.

To confer additional powers on supervisors, 1873–4, 774.

To authorize supervisors to transfer moneys to general fund, 1873–4, 803.

To authorize supervisors to allow claim for printing great register, 1873–4, 871.

Defining duties of short-hand reporter of county court, 1875–6, 12.

To abate squirrel nuisance, 1875–6, 143.

To prevent hogs and goats running at large in Woodbridge, 1875–6, 180.

To issue bonds for redemption of bonds due during 1876, 1875–6, 235.

Concerning certain reclamation districts, 1875–6, 281.

Concerning roads and highways, 1875–6, 341.
To pay claim of Laura De Force Gordon against swamp-land district No. 5, 1875–6, 460.
To prevent hogs and goats running at large, 1875–6, 644.
To create West Side irrigation district, 1875–6, 731, 885.
To confer additional powers on trustees of swamp-land district No. 17, 1875–6, 781.
Authorizing John Parrott and others to construct levees on Mokelumne river, 1877–8, 48.
To pay claim of S. G. S. Dunbar, 1877–8, 88.
Regulating terms of county court, 1877–8, 154.
Concerning trespassing animals, 1877–8, 176.
To pay debt for school-house in Tulare school district, 1877–8, 325.
Legalizing swamp-land district No. 221, 1877–8, 435.
Creating West Side irrigation district, 1877–8, 468.
For destruction of squirrels and gophers, 1877–8, 773; repealed 1880, 120.
Fixing salary of county judge, 1877–8, 782.
Providing for a county hospital, 1877–8, 922.
Amending act concerning roads and highways, 1877–8, 1034.
Declaring Mokelumne river navigable, 1880, 22 (Ban. ed. 115).
Repealing act of 1870, relating to office of court commissioner, 1880, 26 (Ban. ed. 154).
Repealing squirrel and gopher act of 1878, 1880, 120 (Ban. ed. 385).
City of Stockton.—For relief of former town council, 1851, 326.
Creating state hospital in city, 1851, 506; 1852, 140; 1853, 208, 267; 1854, 138.
Authorizing trustees of state hospital to erect building for insane of state and providing for their support, 1852, 139; 1853, 208.
To reincorporate city, 1852, 211; 1853, 74; 1857, 144; 1862, 326.
Concerning fire companies, 1853, 60.
Authorizing state controller to audit accounts of president of board of trustees of state hospital, 1853, 93.
Establishing insane asylum, 1853, 203.
To abolish state hospital and provide for liquidating indebtedness of same, 1853, 208.
Authorizing funding of outstanding city scrip, 1855, 71.
Authorizing board of supervisors of San Joaquin county to appropriate money towards completing artesian well on public square of city, 1856, 48.
Second act to reincorporate city, 1857, 133, 197; 1859, 72; 1862, 326.
Authorizing congregation of St. Patrick's Catholic church to remove remains of deceased persons, 1858, 133.
Authorizing trustees of Stockton Rural Cemetery to remove human remains from graveyards in city, etc., 1862, 140.
Third act to reincorporate city, 1862, 314; 1865–6, 598; 1869–70, 587.
Authorizing and empowering common council to vacate parts of certain streets, 1863, 56.
Conferring certain powers upon board of education, and for transfer of certain moneys from school fund of county to school fund of city, 1863, 120.
Providing for collection of delinquent taxes, 1863, 574.
Relative to justices of the peace, 1863–4, 187.
Condemning parts of certain streets adjacent to insane asylum for asylum purposes, 1863–4, 469.
Collection of delinquent taxes, 1865–6, 95; 1869–70, 621.
To reissue bonds, 1865–6, 317.
To establish board of education, 1865–6, 447; 1869–70, 587.
Board of education to borrow money, 1869–70, 6.
Act of reincorporation, 1869–70, 24, 587.
Fourth act of incorporation, 1869–70, 587.
To aid in construction of Stockton and Visalia railroad, 1869–70, 551.
For redemption of bonds, 1871–2, 310.
For settlement of value of certain school property, 1871–2, 530.
To widen Mormon slough, 1871–2, 540.
For funding of school debt, 1871–2, 557; 1873–4, 33.
To reincorporate city, 1871–2, 595; 1873–4, 193, 439; 1875–6, 523.
To submit claim of Henry Meyers, 1873–4, 852.
Appropriation to Ladies' Benevolent Association, 1873–4, 897.
Protection of city from inundation, etc., 1875–6, 12.
To redeem bonds falling due in 1876, 1875–6, 471.
Conferring additional powers on city assessor, 1877–8, 65.
Ratifying contract with Stockton Gas Company, 1877–8, 170.
Ratifying ordinance No. 64, as to exchanging lands with R. B. Lane, 1877–8, 201.
Amending reincorporating act of March 27, 1872, 1877–8, 220.
For erection of building at state insane asylum, 1880, 61 (Ban. ed. 234).
Providing for erection of building and improving drainage about state asylum, 1883, 288.

SAN LUIS OBISPO COUNTY.

References to special and local acts.—Boundaries, 1850, 59; 1851, 173; 1854, 262, 1861, 349; 1863, 358.
Seat of justice, 1850, 59; 1851, 173.
For relief of county treasurer, 1851, 316.
Repealing an act concerning county judges so far as same extends to, 1855, 2.
Legalizing certain records, 1855, 271.
Providing for erection of jail, 1855, 273; 1857, 242.
Incorporating town of San Luis Obispo, 1856, 30; 1858, 315; 1863, 293; 1869–70, 369.
Providing for payment of debts of county, 1857, 160; 1858, 190; 1859, 207; 1863, 43; 1863–4, 22.
Providing for erection of court-house and jail, 1857, 241; 1863, 43; 1863–4, 22.
Relative to publishing, 1857, 270.
Concerning coroners, 1858, 156.
Changing time of holding court of sessions, county court, and probate court, 1858, 163; 1859, 177.
Concerning official bonds of district attorney, surveyor, coroner, and public administrator, 1859, 70.
In relation to trial jurors in court of sessions and county court, 1859, 159; 1862, 247.
Authorizing J. Wilson to sell certain lands belonging to his infant son, J. D. Wilson, 1860, 6.

Concerning county records, 1860, 11.
Concerning roads and highways, 1860, 25 (referring to 1858, 227).
Extending time for collecting taxes, 1860, 103.
Authorizing José de Jesus Pico to sell certain land belonging to his infant children, 1860, 178.
Authorizing sale of certain real estate by guardian of Blas Vicente Canet, 1860, 228.
Authorizing J. C. Cissna to construct breakwater and wharf at port of, and to provide for same, 1860, 263.
Extending time for collecting taxes, 1861, 2.
Authorizing constructing of wagon-road over Coast Range mountains, 1861, 153.
Authorizing county auditor to issue certain bonds, and providing for construction of certain road, 1861, 164.
Legalizing levy of state and county taxes for 1861, 1861, 370.
Fixing compensation of county judge, etc., 1861, 376; 1862, 525.
Authorizing J. C. Cissna to build wharf in bay of San Luis Obispo and construct road, 1861, 411.
Authorizing executors of will of John Wilson, deceased, to sell personal property, pay debts, etc., 1862, 93.
Providing for funding indebtedness outstanding on July 1, 1863, 1863, 41; 1863–4, 21.
Authorizing construction of wagon-road over Coast Range mountains, 1863, 143.
Authorizing guardian of minor children of Miguel Avila to convey their real estate, 1863, 266.
Authorizing guardian of Antonio Villa to sell real estate at private sale, 1863, 304.
Extending time for collection of taxes for 1863, 1863–4, 5.
To prevent trespassing of animals upon private property, 1863–4, 47.
Concerning official bonds of clerk, sheriff, recorder, auditor, and assessor, 1863–4, 101.
In regard to holding terms of county court, 1863–4, 113.
Collection of state and county taxes, 1865–6, 10.
Funding indebtedness of, 1865–6, 220; 1867–8, 8.
Terms of district court, 1865–6, 232, 609.
Act relative to publishing, 1865–6, 282.
Wharf franchise to T. G. Phelps, 1865–6, 311.
Bonds of tax-collector, 1865–6, 415.
Election and term of office of supervisors, 1865–6, 467.
Settlement of delinquent taxes, 1865–6, 488.
Repealing act for destruction of certain wild animals, 1877–8, 2.
Reorganizing board of supervisors, 1877–8, 36.
Extending time for publishing delinquent tax list, 1877–8, 64.
Extending time for completion of railroad to Santa Maria, 1877–8, 114.
Concerning fees and salaries, 1877–8, 128.
Concerning trespassing animals, 1877–8, 176.
Substituting bonds of city of San Luis Obispo for those of town of San Luis Obispo, 1877–8, 237.
Empowering trustees of Arroyo Grande school district to issue bonds, 1877–8, 342.
Aid to Southern Pacific railroad, 1865–6, 818.
Concerning roads and highways, 1865–6, 822.
Compensation of county clerk and school superintendent, 1865–6, 838.
Franchise to J. B. Ward and others for wagon-road, 1865–6, 840.
Wharf franchise to D. P. Mallough, 1867–8, 28.
Wharf franchise at San Simeon bay, 1867–8, 243.
To settle title to lands, 1867–8, 245.
Compensation of sheriff, 1867–8, 347.
Terms of district court, 1867–8, 356; 1869–70, 227.
Supervisors' compensation, 1867–8, 449.
Assessors' compensation, 1867–8, 449.
Fees and salaries, 1867–8, 448; 1869–70, 448.
Trustees of infant heirs to sell estate, 1867–8, 642.
To provide for wagon-road in San Luis Obispo and Santa Barbara counties, 1867–8, 700.
Act in relation to herding sheep, 1869–70, 304.
Leave of absence to district attorney, 1869–70, 417.
Fees and salaries, 1869–70, 437; 1875–6, 912.
Election and term of office of supervisors, 1869–70, 561.
To legalize assessments and collect delinquent taxes, 1869–70, 666.
Issuance of bonds to erect county buildings, 1869–70, 816.
Fixing terms of county and probate courts, 1871–2, 35.
To provide road funds, 1871–2, 89.
Concerning roads, 1871–2, 134, 690.
To reincorporate town of San Luis Obispo, 1871–2, 220, 434; 1873–4, 328.
To prevent hunting and shooting on private grounds, 1871–2, 304; 1873–4, 792.
Bonds for erection of county buildings, 1871–2, 369, 579.
As to funding indebtedness of county, 1871–2, 379.
To authorize transcribing of certain records, 1871–2, 402.
To regulate fees in office, 1871–2, 425.
To allow claim of M. B. Harrison, 1871–2, 474.
Salary of district attorney, 1871–2, 654.
To provide for introduction of fresh water into San Luis Obispo, 1871–2, 666.
In fourth congressional district, 1871–2, 714.
Concerning trespasses on lands, 1871–2, 749.
As to herding of sheep, 1871–2, 890.
Additional notaries public, 1873–4, 30.
Repealing special road law, 1873–4, 30.
To protect agriculture, 1873–4, 50.
To pay indebtedness of Olmstead school district, 1873–4, 157.
To provide funds for the town of San Luis Obispo, 1873–4, 294.
In third senatorial district, 1873–4, 366.
To provide road funds, 1873–4, 436; 1875–6, 358.
For relief of David C. Norcross, sheriff, 1873–4, 581.
Fixing salaries of certain officers, 1873–4, 618.
For construction of railroad to Santa Maria, 1873–4, 695.
To incorporate the city of San Luis Obispo, 1875–6, 361.
To provide for issuance of bonds of town of San Luis Obispo, 1875–6, 382.
Reorganizing board of supervisors, and providing for their election, 1875–6, 493.

Authorizing trustees of Mission school district to borrow money for certain purposes, 1875–6, 526.

To encourage destruction of certain wild animals, 1875–6, 533.

Fixing salaries of certain officers, 1875–6, 608.

To abate squirrel nuisance, 1875–6, 637.

To provide funds for road purposes, 1875–6, 907.

Fixing compensation of district attorney, 1877–8, 451.

Amending act of March 20, 1876, incorporating city of San Luis Obispo, 1877–8, 683.

In relation to recorder's fees, 1877–8, 701.

Relating to roads and streets in city of San Luis Obispo, 1877–8, 701.

Relating to inclosures and hunting on inclosed land, 1877–8, 776.

To provide a fund for repairing roads, 1877–8, 826.

In relation to borrowing money for Mission school district, 1877–8, 874.

Relating to police judge of San Luis Obispo city, 1877–8, 946.

SAN MATEO COUNTY.

References to special and local acts.—Boundaries, 1856, 176; 1857, 222; 1867–8, 174.

Seat of justice, 1856, 176; 1857, 223; 1858, 18; 1861, 362.

Organization (provided for in "consolidation act" of city and county of San Francisco), 1856, 176.

Relating to official acts of officers and prescribing certain duties, 1857, 65.

Extending time for collecting taxes, 1857, 184.

Reorganizing and establishing county, 1857, 222; 1858, 315.

Creating board of commissioners, 1857, 295.

Locating county seat, 1858, 18.

Authorizing J. G. Denniston to construct wharf at Halfmoon bay, 1858, 34.

Granting right of way over certain lands to D. S. Cook and others for plank or turnpike road from Potrero Nuevo to Fifteen-mile House, 1858, 307; 1860, 54; 1861, 543.

Authorizing and requiring board of supervisors to levy special tax (for completion of court-house and jail), 1859, 16.

In relation to trial jurors in court of sessions and county court, 1859, 159; 1862, 247.

Relating to office of sheriff (mileage), 1859, 228.

Concerning roads and highways, 1859, 228; 1863, 619; 1863–4, 77.

Authorizing board of supervisors to subscribe to stock of San Francisco and San José Railroad Company, 1860, 230.

Authorizing board of supervisors to levy special tax for road purposes, 1860, 331; 1861, 196; 1862, 531.

Relative to office of superintendent of common schools, 1861, 38.

Authorizing board of supervisors to take and subscribe one hundred thousand dollars to stock of San Francisco and San José Railroad Company, etc., 1861, 134.

Submitting to qualified electors question of removal of county seat, 1861, 362.

Granting right of way over certain lands to J. P. Ames and others, 1861, 579.

Providing for election of board of supervisors, 1862, 28; 1863, 577.

Fixing terms of different courts, 1862, 30.

Providing for election of superintendent of common schools, 1862, 95.

Providing for retention of hides of cattle killed or slaughtered, 1862, 118.

Granting right to construct turnpike between Searsville and Pescadero, 1862, 490.

Allowing J. E. Nuttman and others to construct and maintain toll-road, 1863, 99, 361.

Authorizing J. R. Dickey and others to construct and keep in repair certain roads and levy and collect tolls, 1863, 656.

To define and limit compensation of officers and reduce public expenses and taxation, 1863–4, 48.

Authorizing R. C. Kirby and others to construct and maintain turnpike from Santa Cruz to point near line of San Francisco and San José railroad, etc., 1863–4, 173.

Concerning offices of recorder and auditor, 1863–4, 187.

Providing for continuance and election of board of supervisors and defining and limiting their powers and duties, 1863–4, 237.

Regulating times for holding terms and sessions of county court, probate court, and board of supervisors, 1863–4, 242.

Conferring certain powers on board of supervisors in relation to interest and stock held by county in San Francisco and San José railroad, 1863–4, 437.

Granting right to construct turnpike between Searsville and Pescadero, 1863–4, 322.

In relation to delinquent tax list, 1863–4, 499.

Confirm contract for sale of stock held by, 1865–6, 36.

Road franchise to J. Q. A. Tilton and others, 1865–6, 323.

Act to establish pounds, 1865–6, 334; 1869–70, 512.

Act to organize townships, 1865–6, 339; 1867–8, 291, 367, 469, 496; 1869–79, 290, 793.

For preservation of trout, 1865–6, 492.

Compensation of certain officers, 1865–6, 564; 1867–8, 89, 106, 429.

Payment of grand jurors, 1867–8, 60.

Reindexing county records, 1867–8, 82.

Boundaries, 1867–8, 174.

Wharf franchise extended, 1867–8, 242.

Supervisors, election, powers, and duties, 1867–8, 278.

Roads and highways, 1867–8, 283; 1869–70, 362.

Payment of interpreters in courts, 1867–8, 357.

Indigent sick, 1867–8, 366.

Incorporating Redwood City, 1867–8, 411; 1869–70, 364; 1871–2, 712, 742; 1873–4, 946.

Supervisors' compensation, 1867–8, 449.

Assessors' compensation, 1867–8, 449.

Fees and salaries, 1867–8, 448; 1869–70, 148.

Sale of overflowed land to Farming Company, 1867–8, 662; 1869–7, 220.

To pay Mrs. Wright salary as school-teacher, 1867–8, 406.

For the protection of deer, 1869–70, 279.

Act in relation to herding sheep, 1869–70, 304.

Treasurer to pay claim of C. Carvalho, 1869–70, 334.
To authorize payment of claims against Redwood township, 1869–70, 376.
Santa Cruz county to pay certain school moneys, 1869–70, 408.
To provide funds for highways, 1869–70, 730.
For payment of certain claims against the second township, 1869–70, 865.
To fix terms of courts of record, 1871–2, 95.
To provide funds for highways, 1871–2, 297.
To prevent hunting and shooting on private grounds, 1871–2, 304; 1873–4, 792.
To reduce public expenses and taxation, 1871–2, 327.
Concerning roads and highways, 1871–2, 427.
For payment of school moneys by Santa Cruz, 1871–2, 527.
Salary of district attorney, 1871–2, 654.
In fourth congressional district, 1871–2, 714.
To settle certain claims against county, 1871–2, 727; 1873–4, 20.
As to herding of sheep, 1871–2, 890.
To repeal special road laws, 1873–4, 23.
In eighth senatorial district, 1873–4, 367.
To open Stambaugh street in Redwood City, 1873–4, 466.
Bonds for road purposes, etc., 1873–4, 479, 779.
To incorporate town of Menlo Park, 1873–4, 533; 1875–6, 400.
In relation to highways, 1873–4, 907.
Fixing compensation of road overseer and in relation to road poll-tax, 1875–6, 31.
To abate squirrel nuisance, 1875–6, 143.
In relation to boundary fences and trespass of animals, 1875–6, 173.
Transferring swamp-land fund to general fund, 1875–6, 213.
To establish pounds, 1875–6, 335.
Conferring additional powers on supervisors, 1875–6, 485.
For election of clerk of trustees and superintendent of streets in town of Redwood City, 1875–6, 593.
Fixing terms of courts of record, 1877–8, 33.
To fix compensation of road overseers, 1877–8, 109.
For extermination of squirrels, 1877–8, 218.
Amending act establishing pounds, 1877–8, 323.
Relating to salaries and bonds for road purposes, 1877–8, 583.
Conferring certain powers on supervisors (as to transcribing records and road fund), 1877–8, 700; repealed 1881, 21.
To fix terms of county and probate courts, 1877–8, 799.
Defining twelfth judicial district, 1877–8, 944.
For improvement of Middlefield and other roads, 1877–8, 1019.
Repealing act for construction of division fences, 1877–8, 1019.
Repealing act conferring certain powers on board of supervisors, passed in 1878, 1881, 21.

SANTA BARBARA COUNTY.

References to special and local acts.—Boundaries and seat of justice, 1850, 59; 1851, 173; 1852, 218; 1854, 262.
For relief of county treasurer, 1851, 316.
Concerning the county records, 1852, 219.
Fixing compensation of county judge, 1854, 56.
Providing for payment of debt, 1856, 71; 1857, 160; 1858, 190; 1859, 207.
Relative to board of supervisors making publications, 1857, 59.
Relative to publishing, 1857, 270.
Concerning coroner, 1858, 156.
Changing time of holding court of sessions, county court, and probate court, 1858, 163; 1859, 177.
For relief of county, 1858, 291.
Authorizing county to issue bonds for funding debt and construction of roads, and providing for payment of bonds, 1859, 204.
Abolishing office of public administrator, 1859, 336.
Appropriating fifteen thousand dollars for construction of wagon-road, 1860, 294.
Authorizing Encarnacion C. de Robbins to sell certain lands belonging to her infant children, 1861, 10.
Regulating fees of office, 1861, 103.
Authorizing settlement of certain claims against the estate of Cesario Lataillade, 1861, 531.
Granting right to construct turnpike from Great Bend of Mojave river in San Bernardino county, through Williamson's pass, to Pacific coast at Buenaventura, 1862, 33.
Concerning certain salaries, 1863, 51; 1863–4, 34.
To prevent trespassing of animals upon private property, 1863–4, 47.
Fixing bonds of treasurer, 1863–4, 56.
In regard to holding terms of county court, 1863–4, 113.
Fixing compensation of officers, providing for funding floating debt, and prohibiting contracting of any new indebtedness against county, 1863–4, 406.
Franchise to José Maria Loureyro and others to build wharf at San Buenaventura, 1865–6, 83.
Creating board of water commissioners, 1865–6, 93.
Bonds of treasurer, 1865–6, 116.
Funding floating debt, 1865–6, 143.
Legalizing assessment for taxes, 1865–6, 151.
Collection of delinquent taxes, 1865–6, 166.
Incorporating San Buenaventura, 1865–6, 216; 1869–70, 864.
Terms of district court, 1865–6, 232, 609.
Payment of floating claims, 1865–6, 234.
Act relative to publishing, 1865–6, 282; 1867–8, 55.
To legalize proceedings of trustees, 1865–6, 638.
Official bonds of officers, 1865–6, 774.
Franchise to J. B. Ward and others for wagon-road, 1865–6, 840.
Franchise to Santa Barbara Wharf Company, 1867–8, 47.
Supervisors' compensation, 1867–8, 449.
Assessors' compensation, 1867–8, 449.
Fees and salaries, 1867–8, 448; 1869–70, 148.
Wharf franchise to J. B. Ward, 1867–8, 700.
Wagon-road in San Luis Obispo and Santa Barbara counties, 1867–8, 658.
To pay certain claims, 1867–8, 922.

To provide for building a school-house in Pajaro school district, 1875–6, 182.

To reincorporate city of Santa Cruz, 1875–6, 189.

To provide for payment of a certain claim, 1875–6, 250.

To extend wharf franchise to David Girky and others, 1875–6, 510.

To extend wharf franchise to J. E. Davis, and A. P. Jordan and others, 1875–6, 388.

In relation to county officers, their fees and salaries, 1875–6, 576.

For establishing and maintaining public and private roads, 1875–6, 611.

To authorize arrangement to have Santa Cruz railroad pass through town of Watsonville, 1875–6, 725.

Legalizing assessment and levy of taxes, 1877–8, 127.

To provide for payment of certain claims for expenses of 1877–8; 1877–8, 138.

Prescribing duties and fixing salaries of supervisors, 1877–8, 155.

Incorporating town of Felton, 1877–8, 185.

Amending Watsonville incorporation act, 1877–8, 363.

Relating to juries in justices' courts, and witnesses in courts of record, 1877–8, 564.

Relating to inclosures and hunting on inclosed land, 1877–8, 776.

Supplemental to act reincorporating city of Santa Cruz, 1877–8, 870.

To provide sewerage for Santa Cruz city, 1877–8, 999.

Repealing act of 1872 for destruction of squirrels, etc., 1880, 105 (Ban. ed. 344).

SEAT OF GOVERNMENT.

The seat of government of the state of California is declared by the Political Code, sec. 145, to be at the city of Sacramento. The previous legislation in reference to the seat of government will be found collated in the "General Laws," secs. 6755 et seq., and "Supplement," secs. 9366 et seq. Of this previous legislation the Political Code, sec. 697, continued in force the following-named acts and acts amendatory thereof:

An act to provide for the construction of the state capitol in the city of Sacramento, approved March 29, 1860, 128. This act provided for the appointment of a board of state capitol commissioners, consisting of five members, to contract for and superintend the erection of the capitol building, and prescribed their duties. It is the act under which the building has been erected. As its provisions have been almost entirely executed, a simple reference to it is deemed sufficient.

The acts amendatory of the above-mentioned act consist of one approved May 20, 1861, 600 (relating to a contract for the building of the capitol made with M. Fennell), and expressly declared to be amendatory. There are several others, relating to the construction of the building or the board of commissioners, which are virtually amendatory, though they do not in words purport to be so. They will be found collated as above referred to. The only one deemed of sufficient present importance for insertion is the following:

An Act concerning the construction of the state capitol in the city of Sacramento.

[Approved March 29, 1870; 1871–2, 447.]

Board of commissioners, how constituted.

SECTION 1. The board of commissioners created by section one of an act entitled "An act to provide for the construction of the state capitol in the city of Sacramento," approved March twenty-ninth (29th), eighteen hundred and sixty (1860), is hereby declared to be constituted of the governor, of the secretary of state, and of the treasurer of state.

SEC. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed, so far as they conflict with the provisions of this act.

SEC. 3. This act shall take effect immediately.

There have been several acts passed since the adoption of the codes in reference to the state capitol, which may be referred to as follows:

An act to provide additional grounds for the state-capitol building in the city of Sacramento, approved April 1, 1872; 1871–2, 887.

An act to authorize the city of Sacramento to raise and pay to the former owners of land sold to the state of California to enlarge the capitol grounds the balance of the purchase price of said lands, approved March 7, 1874; 1873–4, 309.

An act to abolish the office of architect of the state capitol building, approved March 26, 1874; 1873–4, 662.

An act to provide for the fitting up and use of the governor's mansion as a state printing-office and state armory, approved March 30, 1874; 1873–4, 903.

The act last named is given in the Political Code, sec. 537. The following act relates to the care of the capitol, etc.:

An Act authorizing the appointment of certain permanent employees of the state capitol, and fixing their compensation.

[Approved March 30, 1874; 1873–4, 937.]

Employees at state capitol.

SECTION 1. The superintendent of the state capitol is hereby authorized and empowered to appoint the following employees of the building, and who shall

Authorizing board of supervisors to issue license for toll-bridge across Pajaro river at Malpaso, 1860, 13.
Authorizing board of supervisors to make appropriations to agricultural societies, and legalizing appropriations heretofore made, 1860, 19.
Authorizing administrator of Samuel J. Crosby, deceased, to sell and convey real estate, 1860, 26.
Providing for building a turnpike or gravel road, 1860, 56.
Concerning roads and highways, 1860, 119.
Authorizing administrator of Charles White, deceased, to sell and convey real estate, 1860, 148; 1861, 152.
Authorizing G. S. Adams and others to construct dam across Guadalupe river, 1860, 188.
Authorizing board of supervisors to subscribe to stock of San Francisco and San José Railroad Company, 1860, 261.
Authorizing C. T. Ryland to sell certain real estate of his infant children, 1861, 53.
Authorizing guardian of Policarpia Chabolla to sell real estate, 1861, 77.
Authorizing board of supervisors to take and subscribe two hundred thousand dollars to stock of San Francisco and San José Railroad Company, etc., 1861, 128; 1862, 494.
Authorizing P. Davidson to execute a certain conveyance in behalf of his infant children, 1861, 150.
Authorizing board of supervisors to grant right of way for construction of turnpike roads, 1861, 207.
Authorizing board of supervisors to pay certain school warrants out of genenral fund, 1861, 295.
Authorizing W. T. Wallace to sell certain real estate of his infant children, 1861, 312.
Authorizing guardian of John H. M. Townsend, a minor, to sell real estate, 1861, 405.
Concerning fees, 1861, 477.
Authorizing issue of bonds for erection of court-house, 1861, 491.
Legalizing certain records in recorder's office, 1861, 507.
Granting right to construct bridge across Pajaro river, 1862, 62.
Authorizing governor to convey certain lands at Alviso, 1862, 73.
Regulating artesian wells, 1862, 271.
Establishing pounds, 1892, 330.
Authorizing board of supervisors to have certain Spanish records translated into English, 1863, 11.
Authorizing board of supervisors to take and subscribe one hundred and fifty thousand dollars to stock of Western Pacific Railroad Company, etc., 1863, 276.
Requiring county judge to keep chambers at county seat, 1863, 375.
Concerning estrays and animals found running at large, 1863, 581; 1863–4, 98.
Providing for better protection of private property, 1863, 758.
Authorizing A. Suñol to sell certain real estate of minor child, 1863, 762.
Authorizing J. La Coste to sell certain real estate of minor child, 1863, 763.
Fixing bonds of sheriff, 1863–4, 10.
Redistricting county and providing for election of supervisors, 1863–4, 22.
Authorizing successors in office of James F. Kennedy, deceased, late sheriff, to execute deeds in certain cases, 1863–4, 80.
Regulating fees and fixing salaries of certain officers, 1863–4, 219.
Concerning roads and highways, 1863–4, 248.
Providing for construction of turnpike (from McCartysville to Pescadero creek), 1863–4, 362.
Concerning offices of clerk and recorder, 1863–4, 395.
Conferring certain powers on board of supervisors in relation to interest and stock held by county in San Francisco and San Jose railroad, 1863–4, 437.
Legalizing assessment of 1864, 1865–6, 14.
Jurors' mileage, 1865–6, 123.
County bonds for court-house and jail, 1865–6, 136.
Legalizing subscription to Western Pacific railroad, 1865–6, 158.
Railroad from San José, 1865–6, 226.
Issuance of bonds for county buildings, 1865–6, 136, 446.
Legalizing contract with railroad company, 1865–6, 157.
Act to provide for railroad in, 1865–6, 226.
Act to regulate artesian wells, 1865–6, 308.
To prevent stallions from running at large, 1865–6, 327; 1867–8, 70.
Terms of district courts, 1865–6, 328.
Sale of county stock in railroad, 1865–6, 330.
For preservation of trout, 1865–6, 492.
Incorporating town of Santa Clara, 1865–6, 493.
Roads and highways, 1865–6, 553; 1867–8, 171, 327; 1869–70, 279.
To allow railroad companies to take gravel from Coyote creek, 1865–6, 584.
Public schools, 1865–6, 659.
Legalizing assessment for taxes, 1865–6, 14.
Mileage to be given to trial jurors, 1865–6, 123.
Bond of county treasurer, 1867–8, 112.
Railroad franchise to C. Silent, 1867–8, 259.
County judge to keep chambers at county seat, 1865–6, 269.
To complete court-house and erect jail, 1867–8, 305; 1869–70, 128.
Supervisors' compensation, 1867–8, 449.
Assessors' compensation, 1867–8, 450.
Fees and salaries, 1867–8, 448; 1869–70, 148.
Meeting of board of supervisors, 1867–8, 541.
To confirm and legalize certain contracts, 1867–8, 559.
Franchise to J. N. Thompson and others for tramroad or railroad, 1867–8, 656.
To provide for construction of turnpike, 1867–8, 711.
Additional notary public, 1869–70, 68.
Incorporating Gilroy city, 1869–70, 263; 1875–6, 724.
Act in relation to herding sheep, 1869–70, 304.
Supervisors to pay sheriff certain moneys, 1869–70, 377.
To encourage destruction of squirrels and gophers, 1869–70, 404; 1873–4, 337.
Providing for recording papers in probate court, 1869–70, 636; 1871–2, 60.
County treasurer to pay certain claims, 1869–70, 729.
For the improvement of rivers and streams, 1869–70, 763; 1871–2, 731.
Concerning county records, 1869–70, 779.
To empower probate court to rectify alleged error in matter of estate of James Donohue, 1871–2, 91.

Sale of Western Pacific Railroad Company stock, 1871–2, 139.
To regulate fees of county clerk, 1871–2, 212; 1875–6, 402.
To reincorporate town of Santa Clara, 1871–2, 251; 1873–4, 591.
To authorize town of Santa Clara to convey certain lands, 1871–2, 306.
To reincorporate town of Gilroy, 1871–2, 356.
For protection of Alameda road, 1871–2, 367.
For opening Santa Clara avenue, 1871–2, 370; 1873–4, 538.
To improve Santa Clara and Saratoga avenues, 1871–2, 415; 1873–4, 556.
To encourage agriculture, 1871–2, 442.
Concerning roads and highways, 1871–2, 517.
Defining duties of assessor, 1871–2, 534.
Legal distances, 1871–2, 539.
Concerning estrays, 1871–2, 580.
Concerning streams in county, 1871–2, 652.
Salary of district attorney, 1871–2, 653.
To pay sheriff certain money, 1871–2, 662.
In fourth congressional district, 1871–2, 714.
To pay clerk and auditor certain money, 1871–2, 859.
As to herding of sheep, 1871–2, 890.
Refunding of indebtedness, 1871–2, 896.
Leave of absence to C. Finley, county clerk, 1873–4, 4.
Additional notaries public, 1873–4, 30.
For relief of J. H. Adams, sheriff, 1873–4, 58.
To repeal special road laws, 1873–4, 87.
To regulate fees, 1873–4, 102, 230.
For keeping more complete records, 1873–4, 231.
Seventh senatorial district, 1873–4, 366.
Concerning roads and highways, 1873–4, 453; 1875–6, 167, 606.
Authorizing auditor to provide seal of office, 1873–4, 600.
Fees of county officers, 1873–4, 610.
To exempt firemen from poll-tax, 1873–4, 731, 825; 1875–6, 287.
To credit county with old balances, 1873–4, 802.
In relation to county officers' fees and salaries, 1875–6, 35, 363.
To abate squirrel nuisance, 1875–6, 143.
Regulating use of artesian wells, 1875–6, 331.
For the refunding of certain bonded indebtedness, 1875–6, 489.
Authorizing trustees of town of Santa Clara to sell a certain public square, 1875–6, 569.
As to artesian wells, 1877–8, 195.
Authorizing town of Santa Clara to construct a main public sewer, 1877–8, 216.
Amending act of February 10, 1876, concerning officers' fees and salaries, 1877–8, 288.
Amending act of March 28, 1872, concerning streams, 1877–8, 293.
Authorizing issue of bonds to pay certain indebtedness, 1877–8, 293.
Repealing act of March 13, 1876, to protect public roads, 1877–8, 298.
Fixing fees of coroner, 1877–8, 426.
For payment of E. L. Derby for construction of Lick avenue, 1877–8, 850.

City of San Jose.—Incorporating city of San José, 1850, 124, 261; 1851, 329; 1853, 150; 1854, 229; 1857, 119.
For relief of mayor and city council, 1851, 328.
Authorizing funding of debt of city, and providing for payment, 1856, 211.
To reincorporate city, 1857, 113; 1858, 156; 1859, 117.
Authorizing funding of unfunded debt of city, and providing for payment, 1858, 193; 1859, 75; 1862, 113; 1863, 174.
Third act incorporating city, 1859, 109; 1860, 8, 340; 1862, 117; 1863, 61.
Legalizing acts of mayor and common council, 1860, 8.
Concerning city, and ratifying and confirming a certain ordinance (respecting gas-light franchise), 1861, 142.
Providing for collection of delinquent taxes, 1862, 62.
Consolidating school funds, 1863, 46.
Authorizing city to loan its credit for school purposes, and providing for redemption, 1863–4, 36.
Conferring further powers upon common council, 1863–4, 81.
Exempted from act concerning roads and highways in Santa Clara county, 1863–4, 254.
Providing for paying legal and equitable indebtedness of city, 1863–4, 271.
Board of commissioners abolished, 1865–6, 15.
Railroad to Santa Clara, 1865–6, 226.
Reincorporation of, 1865–6, 246.
Telegraph to San Bernardino, 1865–6, 308.
To ratify ordinances, 1865–6, 635.
To open Market street through Market plaza, 1867–8, 120.
To sell bonds, and purchase site for schoolhouse, 1869–70, 448.
To incorporate fire department, 1869–70, 562.
To reincorporate city of San José, 1871–2, 333.
For opening Santa Clara avenue, 1871–2, 370.
To issue bonds for providing sewerage, 1871–2, 365; 1873–4, 764.
Appropriation to Ladies' Benevolent Society, 1871–2, 748; 1873–4, 898.
Reincorporating city of San José, 1873–4, 395; 1875–6, 627.
For establishment of law library, 1873–4, 727.
Appropriation to state normal school, 1875–6, 482.
Ratifying acts of mayor and common council as to Market plaza, 1877–8, 163.
Amending reincorporating act of March 17, 1874, 1877–8, 289, 846.
Concerning Santa Clara avenue, 1877–8, 290.
For establishment of board of health, 1877–8, 296.
To provide for opening of new streets, and extending existing streets, 1877–8, 620.
For issue of bonds to provide sewerage, 1877–8, 631.
Granting additional powers to mayor and common council, 1877–8, 682.
For erection of normal-school building, 1880, 40 (Ban. ed. 192).
To provide for the improvement of Normal School square, 1881, 4.
Relief of J. W. Metcalf and G. McLellan on claim for erection of old normal-school building, 1883, 293.

SANTA CRUZ COUNTY.

References to special and local acts.—(This county in 1850 was called Branciforte.)

Boundaries 1850, 59, 155; 1851, 173; 1867–8, 174.

Seat of justice, 1850, 59, 156; 1851, 173.

Providing for construction of wagon-road from Santa Cruz to San José, 1851, 323.

Providing for settling boundary line between Santa Cruz, Santa Clara, and San Francisco counties, 1855, 228.

Authorizing I. E. Davis and A. P. Jordan and associates to construct wharf at Santa Cruz, 1855, 291; 1856, 79.

Authorizing D. Girky and others to build wharf at Santa Cruz, 1856, 74.

Fixing time of holding several courts authorized to be held by county judge, 1857, 39.

Concerning county judge (residence), 1857, 202.

Providing for payment of debt, 1857, 237; 1858, 116.

Fixing compensation of certain officers (county judge, district attorney, and assessor and deputies), 1857, 256.

Authorizing board of supervisors to levy special tax for building purposes, 1858, 23.

Authorizing guardian of minor children of José A. Rodriguez, deceased, and heirs of Sebastian Rodriguez, deceased, to sell certain real estate, 1858, 290.

Fixing compensation of district attorney, 1859, 151.

Concerning revenue (publication of delinquent tax list), 1859, 179.

Authorizing executors of Peter Tracy, deceased, to sell real estate, 1860, 71.

Legalizing an order of board of supervisors and all proceedings thereunder (concerning treasurer's pay for collection of taxes), 1860, 126.

For opening and repairing roads, 1860, 150; 1861, 314.

Authorizing sale of portion of real estate of James Williams, deceased, 1860, 284.

Extending time of collecting taxes, 1861, 32.

Authorizing guardian of minor heirs of James Williams, deceased, to sell real estate, 1861, 480.

Fixing salary of county judge, 1862, 94.

Providing for establishment, maintenance, and protection of public and private roads, 1862, 256; 1863, 317.

Granting right to construct turnpike between Searsville and Pescadero, 1862, 490.

Fixing compensation of assessor, 1863–4, 96.

Authorizing R. C. Kirby and others to construct and maintain turnpike from Santa Cruz to point near line of San Francisco and San José railroad, etc., 1863–4, 173.

Granting right to construct turnpike between Searsville and Pescadero, 1863–4, 322.

Providing for construction of turnpike (from McCartysville to Pescadero creek), 1863–4, 362.

To settle title to lands in village and town of Branciforte, 1863–4, 443.

Authorizing E. Anthony and others to lay down water-pipes in town of Santa Cruz, 1865–6, 8.

Treasurer to collect taxes, 1865–6, 202.

Supervisors to issue bonds and provide revenue, 1865–6, 203; 1867–8, 681.

To provide for payment of debt of, 1865–6, 326.

To prevent stallions from running at large, 1865–6, 327; 1867–8, 70.

Terms of district courts, 1865–6, 328.

Incorporating town of Santa Cruz, 1865–6, 547; 1869–70, 32, 578.

Public schools in, 1865–6, 659.

Protection of seals and sea-lions, 1865–6, 633.

To redistrict the county, 1865–6, 781, 837.

Franchise to L. Schwartz and others for a wharf near Aptos creek, 1865–6, 824.

Salary of county judge, 1867–8, 10.

Mileage to jurors, 1867–8, 41.

Boundary line, 1867–8, 174.

Authorize extension of wharf at Muddy creek, 1867–8, 240.

Supervisors to issue and sell bonds, 1867–8, 274.

Wharf franchise granted to W. W. Waddell, 1867–8, 342.

Supervisors' compensation, 1867–8, 449.

Assessors' compensation, 1867–8, 449.

Fees and salaries, 1867–8, 448; 1869–70, 148.

Incorporating town of Watsonville, 1867–8, 688; 1875–6, 511.

To provide means for government, 1868–70, 34, 781; 1873–4, 584.

Division into supervisor districts, 1867–8, 462.

To open and repair roads, 1867–8, 504.

To aid construction of turnpike road, 1867–8, 711.

Survey of harbor of Santa Cruz and Salinas slough, 1869–70, 66.

Concerning tax collector, 1869–70, 284.

Roads and highways, 1869–70, 340.

To pay over certain school moneys, 1869–70, 408.

Concerning estrays, 1869–70, 860.

Term of office of supervisors, 1869–70, 863.

To legalize assessment of taxes, 1871–2, 17.

To pay county debt, 1871–2, 86.

To encourage destruction of squirrels, gophers, etc., 1871–2, 92; 1873–4, 129.

To regulate fees of sheriff, 1871–2, 331.

To condemn lands for road purposes, 1871–2, 397.

In relation to office of district attorney, 1871–2, 440.

As to incorporation of town of Santa Cruz, 1871–2, 471.

To pay certain school money to San Mateo, 1871–2, 527.

Concerning public roads and highways, 1871–2, 528.

Salary of district attorney, 1871–2, 653.

In fourth congressional district, 1871–2, 714.

For refunding of county indebtedness, 1873–4, 34.

As to incorporation of Watsonville, 1873–4, 43.

To authorize Isaac E. Davis and Henry Cowell to lay down water-pipes in town of Santa Cruz, 1873–4, 229.

In sixth senatorial district, 1873–4, 366.

Issue of bonds for Santa Cruz school district, 1873–4, 496; 1875–6, 404.

For bridges over San Lorenzo and Pajaro rivers, 1873–4, 740.

Concerning office of surveyor, 1875–6, 34.

In relation to offices of coroner and public administrator, 1875–6, 121.

To abate squirrel nuisance, 1875–6, 143.

To provide for building a school-house in Pajaro school district, 1875–6, 182.

To reincorporate city of Santa Cruz, 1875–6, 189.

To provide for payment of a certain claim, 1875–6, 250.

To extend wharf franchise to David Girky and others, 1875–6, 510.

To extend wharf franchise to J. E. Davis, and A. P. Jordan and others, 1875–6, 388.

In relation to county officers, their fees and salaries, 1875–6, 576.

For establishing and maintaining public and private roads, 1875–6, 611.

To authorize arrangement to have Santa Cruz railroad pass through town of Watsonville, 1875–6, 725.

Legalizing assessment and levy of taxes, 1877–8, 127.

To provide for payment of certain claims for expenses of 1877–8; 1877–8, 138.

Prescribing duties and fixing salaries of supervisors, 1877–8, 155.

Incorporating town of Felton, 1877–8, 185.

Amending Watsonville incorporation act, 1877–8, 363.

Relating to juries in justices' courts, and witnesses in courts of record, 1877–8, 564.

Relating to inclosures and hunting on inclosed land, 1877–8, 776.

Supplemental to act reincorporating city of Santa Cruz, 1877–8, 870.

To provide sewerage for Santa Cruz city, 1877–8, 999.

Repealing act of 1872 for destruction of squirrels, etc., 1880, 105 (Ban. ed. 344).

SEAT OF GOVERNMENT.

The seat of government of the state of California is declared by the Political Code, sec. 145, to be at the city of Sacramento. The previous legislation in reference to the seat of government will be found collated in the "General Laws," secs. 6755 et seq., and "Supplement," secs. 9366 et seq. Of this previous legislation the Political Code, sec. 697, continued in force the following-named acts and acts amendatory thereof:

An act to provide for the construction of the state capitol in the city of Sacramento, approved March 29, 1860, 128. This act provided for the appointment of a board of state capitol commissioners, consisting of five members, to contract for and superintend the erection of the capitol building, and prescribed their duties. It is the act under which the building has been erected. As its provisions have been almost entirely executed, a simple reference to it is deemed sufficient.

The acts amendatory of the above-mentioned act consist of one approved May 20, 1861, 600 (relating to a contract for the building of the capitol made with M. Fennell), and expressly declared to be amendatory. There are several others, relating to the construction of the building or the board of commissioners, which are virtually amendatory, though they do not in words purport to be so. They will be found collated as above referred to. The only one deemed of sufficient present importance for insertion is the following:

An Act concerning the construction of the state capitol in the city of Sacramento.

[Approved March 29, 1870; 1871–2, 447.]

Board of commissioners, how constituted.

SECTION 1. The board of commissioners created by section one of an act entitled "An act to provide for the construction of the state capitol in the city of Sacramento," approved March twenty-ninth (29th), eighteen hundred and sixty (1860), is hereby declared to be constituted of the governor, of the secretary of state, and of the treasurer of state.

SEC. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed, so far as they conflict with the provisions of this act.

SEC. 3. This act shall take effect immediately.

There have been several acts passed since the adoption of the codes in reference to the state capitol, which may be referred to as follows:

An act to provide additional grounds for the state-capitol building in the city of Sacramento, approved April 1, 1872; 1871–2, 887.

An act to authorize the city of Sacramento to raise and pay to the former owners of land sold to the state of California to enlarge the capitol grounds the balance of the purchase price of said lands, approved March 7, 1874; 1873–4, 309.

An act to abolish the office of architect of the state capitol building, approved March 26, 1874; 1873–4, 662.

An act to provide for the fitting up and use of the governor's mansion as a state printing-office and state armory, approved March 30, 1874; 1873–4, 903.

The act last named is given in the Political Code, sec. 537. The following act relates to the care of the capitol, etc.:

An Act authorizing the appointment of certain permanent employees of the state capitol, and fixing their compensation.

[Approved March 30, 1874; 1873–4, 937.]

Employees at state capitol.

SECTION 1. The superintendent of the state capitol is hereby authorized and empowered to appoint the following employees of the building, and who shall

serve during his pleasure: one janitor, one engineer, one fireman, three porters, three watchmen.

Duty of janitor.

SEC. 2. It shall be the duty of the janitor to take general charge of the state capitol building, and to secure and preserve the furniture, carpets, curtains, and all other property therein. He shall superintend the lighting of the building, note the state of the gas-meter, and the correctness of the bill for gas each month, before the same is presented for payment. He shall check the delivery of supplies of wood and coal, and become satisfied that the quantity delivered corresponds with the amount ordered by the superintendent. He shall exercise general supervision of the porters and watchmen, have full power to make arrests for disorderly conduct about the building or grounds, and do and perform such other duties as may be required of him by the superintendent.

Employees of capitol grounds—Watchman—Duty of gardener.

SEC. 3. The board of state capitol commissioners are hereby authorized and empowered to appoint the following employees of the capitol grounds, and who shall serve during the pleasure of said board: One gardener, eight laborers, and one watchman of the governor's mansion. The gardener shall have general control of the capitol grounds, and shall superintend and direct the planting and culture of the trees, shrubbery, plants, and grasses thereof, and preserve in order the walks, grass plats, of said grounds. He shall exercise direction and control over the laborers employed under this act to aid in taking charge of said grounds. He shall have full power to make arrests within the capitol grounds for criminal or disorderly conduct, and to perform such other duties as may be required of him by the said state capitol commissioners. [*Amendment, approved April* 16, 1880; 1880, 107 (*Ban. ed.* 346); *took effect from passage.*]

Salaries.

SEC. 4. The following salaries shall be paid to said employees, to wit: janitor, one hundred and twenty-five dollars per month; engineeer, one hundred and twenty-five dollars per month; fireman, seventy-five dollars per month; porters, seventy-five dollars each per month; watchmen, seventy-five dollars each per month; gardener, one hundred and twenty-five dollars per month; laborers, seventy-five dollars each per month. For the payment of the above salaries, the sum of twenty-eight thousand eight hundred dollars is hereby appropriated out of any moneys in the general fund not otherwise appropriated. Said salaries shall be paid monthly, as salaries of state officers are paid; and the controller of state is hereby authorized to draw his warrant on the treasurer of state in accordance with the provisions of this act.

SEC. 5. This act shall take effect immediately.

An act to prohibit the sale of intoxicating liquor in the state-capitol building; approved April 16, 1880; 1880, 80 (Ban. ed. 273). This act is given in full: See "Liquor," *ante.*

Various acts making appropriations for improvement of the capitol grounds are referred to in title "Sacramento," subhead "Capital of State."

SETTLERS.

An Act for the protection of pre-emption and homestead claimants.

[Approved March 23, 1874; 1873-4, 543.]

Title of pre-emption claimants.

SECTION 1. Every qualified pre-emption claimant under the pre-emption laws of the United States, residing on public lands of the United States within this state, who shall have filed his declaratory statement in accordance with said

pre-emption laws, shall, from the time of said filing, be deemed to have title to and to be in possession of all the land described in such declaratory statement, as against trespassers and all persons having no superior right or title to the same, as long as he shall continue to reside thereon, and to comply in good faith with said pre-emption laws.

Title of homestead claimants.

SEC. 2. Every qualified homestead claimant under the homestead laws of the United States, residing on public land of the United States within this state, who shall have made his original homestead entry in accordance with said laws, shall, from the date of such entry, be deemed to have title to and to be in possession of all the land described in such entry, as against trespassers and all persons having no superior right or title to the same, as long as he shall continue to reside thereon, and to comply in good faith with said homestead laws.

Construction of act.

SEC. 3. Nothing in this act shall be construed to either restrict or enlarge the right of *bona fide* miners to mine for precious metals on the public domain, or to change any general or special laws of this state concerning the grazing of animals on lands not fenced.

SEC. 4. This act shall take effect from and after its passage.

In regard to settlers upon public lands of the state, see the Political Code, and particularly sections 3443 and 3497. As to "Van Ness ordinance" and "outside lands" acts in San Francisco, see references under head of "San Francisco city and county, subhead, "Land Acts, Lands, and Title."

SHASTA COUNTY.

References to special and local acts.—Boundaries, 1850, 62; 1851, 177; 1852, 228; 1856, 118; 1857, 25, 109; 1859, 359; 1860, 339; 1863–4, 264.

Seat of justice, 1850, 62; 1851, 177.

Authorizing J. L. Freaner to construct wagon-road from Sacramento valley to Oregon line. etc., 1852, 150.

Authorizing special election for sheriff, 1852, 230.

Establishing Siskiyou county, 1852, 233.

Fixing time of holding courts authorized to be held by county judge, 1855, 40; 1856–42.

Providing for better maintenance of indigent sick, 1856, 60.

Creating Tehama county, 1856, 118.

To provide for payment of indebtedness contracted prior to March 1, 1857, 1857, 157; 1858, 216.

Fixing time of holding court of sessions and county court, and changing manner of summoning jurors for county court, 1858, 96; 1859, 120; 1861, 58.

Separating office of collector of taxes from office of sheriff, 1858, 101.

Separating offices of recorder, auditor, and clerk of probate court from office of county clerk, 1858, 105.

Regulating issue of county warrants, 1858, 162.

Authorizing board of supervisors to levy special tax and create redemption fund for payment of indebtedness, 1858, 215.

Creating contingent fund, 1859, 129.

Authorizing recorder of Tehama county to transcribe certain records, 1859, 151.

Providing for compensation of keeper of county jail, etc., 1859, 223.

Authorizing Weaverville and Shasta Wagon-road Company to file certain papers *nunc pro tunc*, 1859, 227.

Concerning roads and highways, 1859, 244; 1863, 130; 1863–4, 39.

Authorizing Shasta and Yreka Turnpike Company to file certain papers *nunc pro tunc*, 1860, 11.

Empowering board of supervisors to allow account of J. C. Hinckley & Co., for publishing delinquent tax lists, 1860, 52.

Authorizing board of supervisors to audit and allow clerk of court of sessions additional pay, etc., 1860, 79.

Providing for settling boundary line between Shasta and Plumas counties, 1860, 339.

To transcribe certain records, 1862, 52; 1863, 21.

Providing for public administrator, 1863, 23.

Regulating fees of officers, 1863, 281.

Making office of county treasurer salaried office, 1863, 397.

Fixing salary of district attorney, 1863, 355.

Appropriating money to pay claim of H. C. Stockton, 1863, 571.

Creating Lassen county, 1863–4, 264.

Fixing time of holding county court and probate court, 1863–4, 476.

Concerning office of public administrator, 1863–4, 480.

Wagon-road company, 1865–6, 57.

Salary of county judge, 1865–6, 98.

Office of tax collector abolished, 1865–6, 124.

Consolidation of offices, 1865–6, 129.

Supervisors to annul certain bonds, 1865–6, 284.

Roads and highways, 1865–6, 564; 1867–8, 315.

Drawing warrants on treasury, 1865–6, 814; 1869–70, 344.
County auditor's salary, 1865–6, 834.
Salary of district attorney, 1867–8, 66.
To prevent stallions from running at large, 1867–8, 70.
County judge to execute trusts, 1867–8, 74.
Supervisors' compensation, 1867–8, 449.
Assessors' compensation, 1867–8, 449.
Fees and salaries of officers, 1867–8, 449; 1869–70, 148.
Soda springs and Pitt river turnpike, time extended, 1867–8, 723.
Act in relation to herding sheep, 1869–70, 304.
To provide for payment of salary of officers, 1869–70, 574.
To prevent hogs running at large in town of Shasta, 1871–2, 157.
Concerning roads and highways, 1871–2, 239; 1875–6, 248.
Salary of district attorney, 1871–2, 654.
In third congressional district, 1871–2, 714.
In relation to fees of district attorney, 1871–2, 799.
For incorporation of tramroad companies, 1871–2, 800.
As to herding of sheep, 1871–2, 890.
Fixing salary of county clerk, 1873–4, 168.
Allowing sheriff compensation for under-sheriff, 1873–4, 180.
In twenty-eighth senatorial district, 1873–4, 369.
Concerning employment of teachers, 1873–4, 472; 1875–6, 122.
Authorizing transfer of certain funds, 1873–4, 708.
Relative to roads and highways, 1873–4, 844.
For distribution of school money, 1875–6, 332.
Authorizing Grant I. Taggart, former recorder, to certify and sign certain records, 1875–6, 487.
Repealing all special road laws, 1875–6, 803.
Concerning census of Millville school district, 1875–6, 817.
To prevent hogs running at large in town of Redding, 1877–8, 585.
To provide assessor with sufficient deputies, 1877–8, 958.
Repealing act of 1874, changing orthography of name of town, 1880, 24 (Ban. ed. 117).
For removing obstructions to salmon in Pitt river, 1880, 104 (Ban. ed. 343).

SHEEP.

See Goats.

The Political Code, section 19, in continuing in force all acts in relation to lawful fences, estrays, and the trespassing of animals upon private property, seems to have continued in force the following acts concerning the herding of sheep:

An Act restricting the herding of sheep to certain pastures in the counties of Sonoma and Marin.

[Passed April 21, 1857, 227.]

Sheep on possessory claims.

Section 1. It shall not be lawful for any person or persons owning or having charge of any sheep within the counties of Sonoma, Solano, Marin, San Mateo, Sutter, Santa Clara, San Bernardino, Los Angeles, Contra Costa, Alameda, San Joaquin, Placer, Colusa, Stanislaus, Calaveras, Yolo, Sacramento, Humboldt, Monterey, Merced, San Luis Obispo, Mariposa, Napa, Mendocino, and Shasta to herd the same or permit them to be herded on the land or possessory claim of other than the land or possessory claims of the owners of such sheep. [*Amendment, approved April* 1, 1872; 1871–2, 890; *took effect immediately.*]

Section 1 was previously amended by acts of April 28, 1860, 332, and March 14, 1870; 1869–70, 304.

Penalty.

Sec. 2. The owner or owners or the agents of such owners of sheep, goats, or hogs violating the provisions of section one of this act, on conviction thereof before a justice of the peace of the township where the trespass was committed, shall be liable to a fine of not less than one dollar and costs, nor more than two hundred dollars, the fine to be fixed in the discretion of the court, reference being had to the character and amount of the trespass and the number of sheep or goats so trespassing. [*Amendment, approved March* 30, 1874; 1873–4, 823.]

Unknown owners—Sheep when to be treated as estrays.

Sec. 3. Where the owner or owners or the agents of such owners of sheep found trespassing upon the lands or possessory claim of another shall be unknown to the party or parties injured by such trespass, then all sheep so found trespassing may be treated as estrays, according to the provisions of an

act entitled "An act concerning estray animals," approved April nineteenth, A. D. eighteen hundred and fifty-six

Fines.

SEC. 4. All fines imposed and collected under the provisions of this act shall go to the school fund of the county.

Unoccupied public lands.

SEC. 5. Nothing in this act shall be so construed as to prohibit or prevent the herding of sheep upon any unoccupied public lands of this state, or of the United States, within said counties; provided, that in the counties of Mendocino, Calaveras, Yuba, Merced, and Shasta it shall not be lawful for any person or persons owning or having charge of any sheep to herd the same on any unoccupied lands of this state, or of the United States, where such herding may cause injury or inconvenience to actual settlers residing contiguous to such lands who have horses or cattle ranging on such unoccupied lands; and for a violation of this provision the penalties of section two of the original act to which this is amendatory shall apply. [*Amendment, approved April* 1, 1872; 1871–2, 890; *took effect immediately.*]

Section 5 was previously amended by acts of April 28, 1860, 332, and March 14, 1870; 1869–70, 304.

This act was repealed, so far as it relates to Humboldt and Mendocino counties, in 1878; see at the end of this title.

An Act to restrict the herding of sheep.

[Approved May 18, 1861, 523.]

Restriction.

SECTION 1. It shall not be lawful for any person or persons owning or having charge of any sheep to herd the same, or permit them to be herded, on the land or possessory claims of other than the land or possessory claims of the owners of such sheep.

Owner liable for damages.

SEC. 2. The owner or owners, or the agents of such owners of sheep, violating the provisions of section one of this act, shall be liable to the party injured for all damages sustained by such trespass; and if such trespass be repeated by such owner or owners, or the agent or agents of such owners of sheep, he or they shall be liable to the party injured, for the second and every subsequent trespass, for double the amount of damage so sustained. [*Amendment, approved March* 28, 1868, 426; *took effect immediately.*]

Unknown parties.

SEC. 3. When the owner or owners, or the agents of such owners of sheep found trespassing upon the lands or possessory claim of another, shall be unknown to the party or parties injured by such trespass, then all sheep so trespassing may be treated as estrays, according to the provisions of an act entitled "An act concerning estray animals," approved April nineteenth, eighteen hundred and fifty-six.

United States land.

SEC. 4. Nothing in this act shall be construed to prohibit or prevent the herding of sheep upon any unoccupied public lands of this state or of the United States.

Repeal of certain acts.

SEC. 5. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed; and this act is hereby made applicable to Los Angeles county. [*Amendment, approved February* 9, 1866, 56; *took effect from passage.*]

SEC. 6. This act shall take effect from and after its passage.

An Act to restrict the herding of sheep in certain counties of this state.

[Approved May 6, 1862, 490.]

Act applicable to certain counties.

SECTION 1. It shall not be lawful for any person or persons owning or having charge of any sheep within the counties of Mendocino, Lake, Sonoma, and Marin to herd the same, or permit them to be herded, on the land or possessory claims of other than the lands or possessory claims of the owners or herders of such sheep.

Violations.

SEC. 2. The owner or owners, or the agent of such owners of sheep, violating the provisions of section first of this act, on complaint of the party or parties injured, and on conviction thereof before any justice of the peace for the township where either of the interested parties may reside, shall be liable to a fine of not less than twenty-five dollars, nor more than two hundred dollars, and shall be liable to pay to the party or parties injured in a further sum of not less than twenty-five dollars, in the nature of the damages, for each day such violation of said section shall be permitted to continue.

Fines for benefit of school fund.

SEC. 3. All fines imposed and collected under the provisions of this act shall be paid to the treasurer of the county in which the same may have been collected, for the sole benefit and use of the school fund of said county.

Repealing clause.

SEC. 4. All acts or parts of acts, so far as they conflict with the provisions of this act, are hereby repealed, so far as their application to the counties named in the first section of this act may be concerned.

SEC. 5. This act shall take effect from and after its passage.

An Act to prevent the trespassing of sheep upon private lands in the county of Butte.

[Approved March 26, 1867; 1865–6, 436.]

Liability for damages.

SECTION 1. Any keeper or keepers of sheep in the county of Butte, who shall allow his sheep to run at large without herding, shall be liable to the payment of damages to any person or persons sustaining any injury by the trespass of such sheep upon any private lands in said county; such damages may be recovered by a civil action in any of the courts of said county having jurisdiction in the premises; provided, that when the keeper or keepers of such sheep are known to the person or persons injured by such sheep, the persons so injured shall notify the keeper or keepers of such sheep of the trespass complained of, and shall give a reasonable time to said keeper or keepers of sheep to remove the same before any action for damages shall be maintained.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed so far as they conflict with this act.

SEC. 3. This act shall take effect immediately.

An Act to restrict sheep from being herded or running at large in certain portions of Lake county.

[Approved March 18, 1874; 1873–4, 434.]

Unlawful to have sheep on others' lands.

SECTION 1. It shall not be lawful for any person or persons owning or having charge of any sheep within that portion of Lake county lying north of a line commencing at a point on the county line between the counties of Colusa and

Lake where the Bartlett spring and Bear valley toll-road crosses the same, and running westerly along said road to Bartlett springs; thence westerly along the Upper Lake and Bartlett spring toll-road to the top of Pine or Mill mountain, the same being the dividing ridge between the waters of Clear lake and the north fork of Cache creek; thence south-westerly on a direct line to Goodwin's point on the western shore of Clear lake; thence west to the county line between the counties of lake and Mendocino, to herd the same, or permit them to be herded, or to roam at large of their own accord on the lands or lawful possessory claims of other than the lands or lawful possessory claims of the owners of such sheep. [*Amendment, approved March* 16, 1876; 1875–6, 312; *took effect from passage.*]

Penalty.

SEC. 2. The owner or owners, or agents of such owners of sheep, violating the provisions of section one of this act, on complaint of the party or parties injured, and on conviction thereof, before any justice of the peace for the township where either of the interested parties may reside, shall be liable to a fine of not less than twenty dollars nor more than fifty dollars, and shall be liable to pay to the party or parties injured in a further sum of not less than fifteen dollars, in the nature of damages, for each day such violation of said section shall be permitted to continue.

SEC. 3. This act shall take effect on and after the fifteenth day of May, eighteen hundred and seventy-four.

An Act to amend the foregoing act.

[Approved March 16, 1876; 1875–6, 312.]

Section 1 contained the amendment to section 1 of the foregoing act, therein inserted.

Penalty for violation.

SEC. 2. The owner or owners, or agent for such owners, of sheep violating the provisions of section one of this act, on complaint of the party or parties injured, and on conviction thereof before any justice of the peace for the township where either of the parties reside, shall be liable to a fine not to exceed the sum of fifty dollars, which fine shall be paid into the school fund of said county, and shall be liable to pay the party or parties injured in a further sum, in the nature of damages, for each day such violation of said section shall be permitted to continue, as the court within its jurisdiction may award.

SEC. 3. This act shall take effect from and after its passage.

An Act to restrict sheep from being herded or running at large in Sacramento county.

[Approved March 14, 1876; 1875–6, 305.]

Sheep not to run at large.

SECTION 1. It shall not be lawful for any person or persons owning or having charge of any sheep within the county of Sacramento to herd the same, or permit them to be herded, or to roam at large of their own accord, on the lands of any other person or persons of Sacramento county, said ownership of land to be determined by patent or state possessory claims; provided, that no person or persons in said county shall be entitled to the protection of this act unless said person or persons are and have been paying a state and county tax on the same.

Penalty for violation.

SEC. 2. The owner or owners, or agents of such owners, of such sheep, violating the provisions of section one of this act, on complaint of the party or

parties injured, and on conviction thereof, before any justice of the peace for the township where either of the interested parties may reside, shall be liable to a fine of not less than twenty dollars nor more than fifty dollars, which fine shall be paid into the district school fund of the district in which the complaint was brought, and shall be liable to pay to the party or parties injured a further sum of not less than five cents per head, in the nature of damages, for each day such violation of said section shall be permitted to continue.

SEC. 3. This act shall take effect and be in force from and after its passage.

Protecting sheep from dogs: See section 3341 of the Civil Code, a new section adopted in 1883.

The following acts seem not to have been affected by the codes, and therefore to remain in force:

An Act to protect sheep and lambs in this state.

[Approved May 18, 1861, 501.]

Liabilities of owners of dogs.

SECTION 1. The owner, possessor, or harborer of any dog or other animal that shall kill or wound any sheep, lamb, or Angora or Cashmere goats, shall be liable to the owner or owners of the same for double their value, and may be prosecuted therefor before any court of competent jurisdiction. [*Amendment, approved March* 9, 1870; 1869–70, 223.]

Prosecutions.

SEC. 2. In prosecutions under the provisions of this act, it shall not be necessary for the plaintiff to show that the owner, possessor, or harborer of the dog or other animal, as the case may be, had knowledge of the fact that such dog or animal would kill sheep.

Dogs may be killed.

SEC. 3. Any person may kill any dog which he may find chasing, worrying, or wounding sheep, and shall not be liable therefor.

An Act to protect sheep and Cashmere and Angora goats against the ravages of dogs.

[Approved March 13, 1866; 1865–6, 225.]

Dog tax.

SECTION 1. Every owner, claimant, or keeper of a dog or dogs of the age of four months or over, shall hereafter pay an annual tax on all dogs owned, claimed, or kept by him or her; for the first male dog, one dollar; for every additional male dog, two dollars; and for every female dog, three dollars.

Collection.

SEC. 2. It shall be the duty of the county, district, or township assessors, as the case may be, at the time of making their annual assessment of real estate and personal property, to ascertain by diligent inquiry and examination the names of all persons owning, claiming, or keeping any dog or dogs, and they shall assess all such dogs in the amounts respectively, as provided in the first section of this act, to the person or persons owning, claiming, or keeping the same, and shall make lists and delivery thereof on their annual tax lists or assessment rolls at the same time and in the same manner as their lists and delivery of other personal property are made and delivered; and the proper officers are hereby empowered and required to collect such tax on dogs in the same mode and manner as other taxes are collected, and to pay over the same into the county school fund.

Ownership.

SEC. 3. Every dog kept or staying at any house shall be deemed sufficient evidence of ownership to authorize the assessor to return the person inhabiting

the house as the owner of such dog; and any person sending his or her dog from house to house or from place to place in order to evade said tax shall pay double rates therefor; and every dog not so returned shall be deemed to have no owner, and may be lawfully killed by any person seeing the same running at large.

Damages.

SEC. 4. The owner or owners of any dog or dogs which shall worry, wound, or kill any sheep, Cashmere or Angora goats, shall be liable to the owner or possessor of such sheep, goat or goats, for the damages and costs of suit, to be recovered before any court having jurisdiction in the case.

Killing.

SEC. 5. Any person finding any dog or dogs, not on the premises of its owner, worrying wounding, or killing any sheep, or Cashmere or Angora goats, may kill the same, and the owner thereof shall sustain no action for damages against any person so killing any dog or dogs under such circumstances.

The following special and local acts were passed in 1878: An Act to repeal an act entitled an act restricting the herding of sheep to certain pastures in the counties of Sonoma and Marin, passed April 21, 1857, and the acts amendatory thereof, so far as they relate to the counties of Mendocino and Humboldt, approved February 14, 1878; 1877–8, 79.

An act restricting the herding of sheep to certain pastures in the county of Modoc, approved March 14, 1878; 1877–8, 241.

An act to prevent sheep and goats from being herded or running at large in certain portions of Lake county, approved March 29, 1878; 1877–8, 685.

SIERRA COUNTY.

References to special and local acts.—Boundaries, 1852, 230; 1863, 114; 1865–6, 228; 1867–8, 462.

Seat of justice, 1852, 230.

Creating Sierra county, providing for organization, etc., 1852, 230.

Allowing J. Golden to collect tolls on certain road, 1854, 214.

Fixing compensation of county judge, 1855, 114.

To fund debt and provide for payment, 1856, 66; 1858, 127.

Defining time when county officers shall enter upon discharge of duties, 1856, 73; 1857, 316.

Fixing times of holding county court, probate court, and court of sessions, 1858, 41; 1860, 52.

Providing for monthly statement of receipts and disbursements by county treasurer, 1858, 67.

Authorizing Sierra Nevada Lake Water and Mining Company to change principal place of business, 1858, 80.

Concerning collection of poll-taxes, license taxes, and foreign miners' licenses, 1858, 145; 1860, 30; 1862, 144.

Fixing compensation of district attorney, 1858, 202; 1861, 377.

Concerning office of public administrator, 1859, 24.

Levying taxes for 1859 for county purposes, 1859, 132.

Separating offices of recorder, auditor, and clerk of probate court from office of county clerk, 1859, 299.

Changing time of assessing value of real and personal property and collecting taxes, 1859, 317; 1862, 185; 1863, 323, 1863–4, 272.

Authorizing board of supervisors to levy taxes for county purposes, 1860, 84; 1861, 44; 1862, 21; 1863, 21; 1863–4, 25.

Providing for settling boundary line between Sierra and Plumas counties, 1860, 339.

For relief of sureties upon recognizance of Mike Freel, 1861, 348.

In relation to county officers, 1861, 461; 1862, 103; 1863, 58, 392.

Providing for payment of certain outstanding indebtedness, 1861, 505.

Changing time for meeting of board of supervisors, 1862, 21.

Granting right to construct turnpike from La Porte, through Beckwith pass, to eastern boundary of state, 1862, 479; 1863–4, 224.

Establishing and regulating fire department of town of Downieville, 1863, 70.

Incorporating town of Downieville, 1863, 74; 1863–4, 275; 1865–6, 642.

To better define boundaries, collect taxes, transfer records, and legalize actions determined and pending in Sierra and Plumas counties, 1863, 114.

Regulating payments of money into county treasury, 1863–4, 25.

Providing for time of holding county court and probate court, 1863–4, 41.

Providing for collection of delinquent taxes, 1863–4, 86.

Concerning roads and highways, 1863–4, 175.

Authorizing board of supervisors to provide for construction of certain wagon-road, 1863–4, 200.

Indigent sick in, 1865–6, 34.

Collection of delinquent taxes in Downieville, 1865–6, 40.

Wagon-road from Downieville to Sierraville, 1865–6, 43.

To levy taxes for county purposes, 1865–6, 55.

Public roads and trails, 1865–6, 60.

Canal companies, 1865–6, 53.

Terms of district court. 1865–6, 79; 1867–8, 95.

Changing time of assessing property, 1865–6, 104.
To issue bonds for Marysville and Beckwith Pass turnpike, 1865–6, 113.
County officers, 1865–6, 132.
Boundary line, 1865–6, 228.
Act to regulate fees, 1865–6, 272.
Wagon-road from Weber's lake to Randolph, 1865–6, 284.
Franchise to J. C. Church and others for wagon-road to Quincy, 1865–6, 490.
To further regulate collection of taxes, 1865–6, 540.
Hogs running at large, 1865–6, 567.
For collecting taxes, 1865–6, 860.
Act concerning jurors, 1867–8, 39.
Time of assessing property changed, 1867–8, 62.
Stallions running at large, 1867–8, 70.
Terms of district court, 1867–8, 96.
Supervisors' compensation, 1867–8, 449.
Assessors' compensation, 1867–8, 449.
Fees and salaries, 1867–8, 448.
Boundaries, 1867–8, 462.
In relation to county officers, 1869–70, 285.
Roads and highways in Sierra township, 1869–70, 378.
Leave of absence to district attorney, 1869–70, 397.
Supervisors to build wagon-road, 1869–70, 519.
For the protection of game, 1869–70, 853.
To improve Little Truckee river, 1871–2, 70.
For maintenance of public roads and trails, 1871–2, 235; 1873–4, 181.
Concerning South fork and Sierra valley turnpike, 1871–2, 361.
For protection of game, 1871–2, 433.
Concerning office of treasurer, 1871–2, 582.
Repealing act concerning roads and highways, 1871–2, 584.
Salary of district attorney, 1871–2, 654.
To provide for legalizing certain assessments, 1871–2, 692.
In third congressional district, 1871–2, 714.
To protect fish, 1871–2, 794; 1873–4, 154; 1875–6, 725.
Concerning office of treasurer, 1873–4, 185.
Granting Sierra Iron Company right to construct road, 1873–4, 341.
Relating to license fees, 1873–4, 346.
In twenty-fourth senatorial district, 1873–4, 369.
Authorizing supervisors to levy taxes, 1873–4, 510.
Authorizing E. Barry to remove certain human remains, 1875–6, 47.
Relating to road districts and road overseers, 1875–6, 405.
Relating to road poll-tax, 1875–6, 594.
For construction of wagon-road from Downieville to Forest City, 1877–8, 453.
For construction of wagon-road from Sardine creek to Mohawk valley, in Plumas county, 1877–8, 453.
Granting leave of absence to G. W. Hughes, county assessor, 1877–8, 883.

SILK CULTURE.

An Act to establish a state board of silk culture, and to provide moneys for the expenses thereof.

[Approved March 15, 1883; 1883, 369.]

Board.

SECTION 1. There shall be established a state board of silk culture, consisting of nine persons appointed by the governor from the state at large, five at least of whom shall be members of the Ladies' Silk Culture Society of California.

Members.

SEC. 2. The members so appointed shall be especially qualified by practical experience and study of the silk industry. Each member shall hold office for the term of four years, except those first appointed, four of whom, to be determined by lot, shall retire at the end of two years, when their successors shall be appointed by the governor.

Secretary and treasurer.

SEC. 3. The board may appoint and prescribe the duties of a secretary, and elect one of their own number treasurer, both to hold office at the pleasure of the board. The treasurer shall give a bond to the state, approved by the board, in the sum of ten thousand dollars, for the faithful discharge of his or her duties.

Powers of board.

SEC. 4. The board may receive, manage, and use donations or bequests for promoting silk culture in this state. The board shall establish, as soon as practicable, a filature or silk-reeling school in San Francisco, Sacramento, or Stockton, wherein free instruction shall be given in silk-reeling.

Duties of secretary.

SEC. 5. The secretary, in addition to performing such official duties as the board may direct, shall collect statistics and other information showing the

condition and progress of sericulture throughout the state; correspond with various societies and individuals, both at home and abroad, who are engaged in the promotion of silk culture, and shall prepare a full report thereof, to be made to the board annually, for their publication; and shall receive for all such services a salary not to exceed one hundred dollars per month.

Reports.

SEC. 6. The board shall biennially, in the month of January, report to the legislature a detailed statement of its work. The report so made shall, under the direction of the controller, be printed in pamphlet form, not to exceed fifty printed pages, and not to exceed two thousand copies thereof, to be distributed as the board may direct. All printing required to be done by the board for their official use shall be done by the state printer.

Duties of treasurer.

SEC. 7. The treasurer shall hold all moneys of the board, and pay out the same only on orders approved by the board, and shall account therefor in his or her annual report.

Appropriation.

SEC. 8. There is hereby appropriated for the use of the state board of silk culture, as set forth in this act, out of any moneys in the state treasury not otherwise appropriated, the sum of five thousand dollars for the year commencing the first of April, eighteen hundred and eighty-three, and two thousand five hundred dollars for the year commencing the first of April, eighteen hundred and eighty-four, and the state controller will draw his warrants upon the state treasurer in favor of the treasurer of the board, as such officer, for the said sums, or any parts thereof, when they become available, upon the proper demand of said board.

SEC. 9. This act shall take effect from and after its passage, and all acts or parts of acts in conflict with this act are hereby repealed.

An Act to establish a state board of silk culture, and to provide moneys for the expenses thereof.

[Approved March 18, 1885; 1885, 216.]

Creation of board of silk culture.

SECTION 1. There shall be established a state board of silk culture, consisting of seven persons appointed by the governor from the state at large, three of whom shall be members of the Ladies' Silk Culture Society of California.

Qualification of members.

SEC. 2. A majority of the members so appointed shall be specially qualified by practical experience and study of the silk industry. Each member shall hold office for the term of four years, except those first appointed, three of whom, to be determined by lot, shall retire at the end of two years, when their successors shall be appointed by the governor.

Secretary and treasurer.

SEC. 3. The board may appoint and prescribe the duties of a secretary, and elect one of their own number treasurer, both to hold office at the pleasure of the board. The treasurer shall give a bond to the state, approved by the board, in the sum of ten thousand dollars for the faithful discharge of his or her duties.

Filature donations.

SEC. 4. The board may receive, manage, and use donations or bequests for promoting silk culture in this state. They shall establish a filature or silk-reeling school in San Francisco, wherein free instruction shall be given in silk-reeling. The board shall use the moneys appropriated by the state to advance the interest of silk culture in this state as they deem best and proper.

Duties of secretary.

SEC. 5. The secretary, in addition to performing such official duties as the board may direct, shall collect statistics and other information showing the condition and progress of sericulture throughout the state; correspond with various societies and individuals, both at home and abroad, who are engaged in the promotion of silk culture, and shall prepare a full report thereof to be made to the board annually for their publication.

Reports of board.

SEC. 6. The board shall biennally, in the month of December, have their biennial report printed, and submit the same to the legislature upon its convening. The detailed report so made shall, under the direction of the controller, be printed in pamphlet form, not to exceed fifty printed pages, and not to exceed three thousand copies thereof, to be distributed as the board may direct. All printing required to be done by the board for their official use shall be done by the state printer.

Treasurer.

SEC. 7. The treasurer shall hold all moneys of the board, and pay out the same only on orders approved by the board, and shall account therefor in his or her annual report.

No compensation for officers.

SEC. 8. No remuneration or salaries shall be paid to any member of the board, its officers, or superintendent, for services rendered; nor shall any moneys be used in the purchase of trees, cuttings, eggs, cocoons, or anything pertaining to silk culture, for the purpose of a free distribution of the same, in excess of five hundred dollars per year.

Appropriation.

SEC. 9. There is hereby appropriated for the use of the state board of silk culture, as set forth in this act, out of any moneys in the state treasury not otherwise appropriated, the sum of five thousand dollars for the year commencing the first of July, eighteen hundred and eighty-five, and five thousand dollars for the year commencing the first of July, eighteen hundred and eighty-six, and the state controller shall draw his warrants upon the state treasurer in favor of the treasurer of the board, as such officer, for the said sums, or any parts thereof, when they become available, upon the proper demand of said board.

Books and property of former board.

SEC. 10. Upon the organization of the board of silk culture provided for in this act, the present state board of silk culture shall turn over to the board herein provided for all books, papers, and property in its possession belonging to the state, and the board hereby created shall pay the just debts of the present board of silk culture.

SEC. 11. This act shall take effect from and after its passage, and all acts or parts of acts in conflict with this act are hereby repealed.

SISKIYOU COUNTY.

References to special and local acts.—Boundaries and seat of justice, 1852, 233.

Establishing Siskiyou county, 1852, 233.

Fixing compensation of county judge, 1855, 150.

Providing for better maintenance of indigent sick, 1856, 60; 1861, 212.

Creating board of commissioners to examine claims and report amount of services rendered and supplies furnished in suppression of Indian hostilities, 1856, 109.

Fixing compensation of district attorney, 1857, 21; 1859, 59; 1863, 101.

Fixing time of holding court of sessions, county court and probate court, 1857, 207.

Providing for incorporation of city of Yreka, 1857, 229; 1860, 313; 1865–6, 529.

To fund debt, 1857, 318; 1858, 27; 1860; 48; 1862, 54.

Authorizing board of supervisors to levy additional tax for county expenditures, 1858, 26.

Fixing compensation of members of board of supervisors, 1858, 61.

Extending time for making assessment and collection of taxes, 1858, 137; 1859, 31.

Legalizing order of court of sessions (allowing county treasurer certain compensation), 1829, 3.

Authorizing board of supervisors to audit and allow claims of D. R. Dale, 1859, 40.

Authorizing board of supervisors to transfer certain funds, 1859, 118; 1860, 48.

Authorizing county to retain state's portion of poll-tax, etc., to be applied in construction and improvement of wagon-road from Cloverdale to Yreka, 1859, 323.

Concerning roads and highways, 1859, 368; 1860, 42, 95, 314; 1861, 475; 1862, 69; 1863–4, 296.

Authorizing Shasta and Yreka Turnpike Company to file certain papers *nunc pro tunc*, 1860, 11.

Providing for reindexing county records, 1861, 274.

Legalizing acts of county surveyor in defining northern boundary line, 1861, 373.

Authorizing widow of David Buterfield, deceased, to convey certain property, 1861, 526.

Authorizing board of supervisors to audit and allow claim of R. Nixon, jun., 1862, 271.

To submit claim of W. Martin to voters, 1862, 527.

For relief of M. Sleeper, tax collector, 1863, 54.

Authorizing board of supervisors to transfer certain funds belonging to county hospital general fund to school fund, 1863–4, 188.

To transfer and loan money on land, 1865–6, 83.

Interest tax of, 1865–6, 225.

Roads and highways in, 1865–6, 318, 664.

Concerning marks and brands, 1865–6, 332.

Bridge franchise across Klamath river, 1865–6, 353.

Fees of office of assessor and treasurer, 1865–6, 552.

To create board of water commissioners, 1865–6, 609.

Fees of office, 1865–6, 694.

Protection of game, 1865–6, 855.

Act concerning trout, 1865–6, 857.

To refund the funded debt, 1867–8, 343.

To transfer moneys to school fund, 1867–8, 422.

Supervisors' compensation, 1867–8, 449.

Assessors' compensation, 1867–8, 449.

Fees and salaries, 1867–8, 448; 1869–70, 249, 262.

Act concerning jurors, 1867–8, 39.

Supervisors to transfer moneys, 1869–70, 51.

To regulate fees of office, 1869–70, 249.

Act in relation to herding sheep, 1869–70, 304.

Relative to Yreka school district, 1869–70, 326.

Indigent sick, 1869–70, 361; 1871–2, 215.

Roads and highways, 1869–70, 396.

Term of Soda springs and Pitt river turnpike franchise extended, 1867–8, 723.

To provide funds for support of common schools, 1871–2, 2, 231.

In relation to claim of James E. Carr, 1871–2, 32.

Transfer of funds and assets from school fund to general fund, 1871–2, 81.

To prevent propagation of Scotch or Canada thistle, 1871–2, 214.

For preservation of fish, 1871–2, 385.

To incorporate town of Fort Jones, 1871–2, 387.

Transfer of Indian fund to school fund, 1871–2, 418.

For protection of game, 1871–2, 433.

For encouragement of agriculture, 1871–2, 442.

Tax for wagon-road from Scott Valley to Sawyer's Bar, 1871–2, 552.

Fixing time for holding district and county courts, 1871–2, 561.

Salary of district attorney, 1871–2, 654.

In third congressional district, 1871–2, 714.

To pay Presley A. Dorris a certain sum, 1871–2, 802.

As to taking effect of certain parts of codes, 1871–2, 845.

For survey of southern boundary, 1871–2, 886.

Relating to Yreka school district, 1873–4, 27.

To create county of Modoc, 1873–4, 124, 517.

To regulate fees and salaries, 1873–4, 188, 719.

To pay for school-house in Oro Fino school district, 1873–4, 282.

To change name of Rough and Ready to Etna, 1873–4, 346.

In twenty-eighth senatorial district, 1873–4, 369.

For maintenance of indigent sick, 1873–4, 390.

To protect treasury, 1873–4, 393.

To pay claim of George Durand, 1873–4, 722.

To exempt fireman from poll-tax, 1873–4, 731; 1875–6, 287.

To annex portion of Klamath county, 1873–4, 755; 1875–6, 603.

To apportion school moneys, 1873–4, 896; 1875–6, 33.

Resolution as to Indian reservation, 1873–4, 971.

For relief of East Fork school district, 1875–6, 529.

Providing for payment of semi-annual interest and principal of bonds issued by Modoc to Siskiyou county, 1875–6, 649.

Supplemental to act of April 22, 1861, providing for indigent sick, 1877–8, 26.

Incorporating town of Etna, 1877–8, 261.

For relief of Klamath school district, 1877–8, 340.

For erecting school-house in Scott Valley school district, 1877–8, 593.

For refunding funded debt, 1877–8, 623.

To provide a new great register, 1887–8, 693.

SOLANO COUNTY.

References to special and local acts.—Boundaries and seat of justice, 1850, 61; 1851, 179; 1852, 236; 1853, 20; 1873–4, 783.

Legalizing order of court of sessions in relation to reduction of taxes, 1851, 310.

Authorizing W. Moody and M. Hart to build wharf, 1852, 237; 1853, 30; 1857, 249; 1858, 74.

Attaching Signor or Mare island to county, 1853, 20.

To fund debt and provide for payment, 1854, 80; 1863–4, 31.

Authorizing S. K. Nurse to build wharf, 1854, 196.

Authorizing L. Richardson to build wharf, 1854, 256.

Authorizing D. N. Darlington and others to build wharf, 1855, 15.

Fixing times for holding court of sessions, county court, and probate court, 1856, 61; 1859, 260; 1860, 106; 1863, 48.

Fixing compensation of county judge, 1857, 14; 1862, 64.

Fixing compensation of district attorney, 1857, 14; 1858, 202; 1859, 59.

Legalizing certain records, 1857, 159.

Authorizing A. Powell, jun., and others, to construct wharf, 1857, 203.

Authorizing Main-street Wharf Company to build wharf, 1857, 221.

Authorizing C. J. Collins, associates, and assigns, to build wharf at Point Collberg, 1857, 230; 1860, 138.

To adjust amount of indebtedness of Napa county to Solano county, 1857, 234.

Providing for transcribing and transferring certain records to Napa county, 1858, 65.

For relief of Paul Shirley, late sheriff, 1858, 151.

To relocate county seat by qualified voters, 1858, 294.

Authorizing A. P. Jackson to excavate and render navigable a certain slough, 1858, 313.

Authorizing A. P. Jackson to construct wharf, 1858, 316.

Concerning roads and highways, 1859, 16 (referring to 1857, 227); 1860, 25.

Extending time for collecting taxes, 1859, 18; 1860, 7.

Authorizing construction of certain wharves by J. R. Price and others, 1859, 35; 1860, 19.

Providing for erection of public buildings, 1859, 37.

Concerning county judge, 1859, 51.

Authorizing and empowering county recorder to transcribe certain records, and legalizing same, 1859, 66.

Concerning office of sheriff, 1859, 94.

Authorizing sale of certain real estate by guardians of minor heirs of Manuel Baca, deceased, 1859, 137; 1860, 177.

Providing for levying taxes for 1859, 1859, 157.

Authorizing board of supervisors to take and subscribe two hundred thousand dollars to stock of San Francisco and Marysville Railroad Company, etc., 1859, 266.

Authorizing administratrix of John McKenna, deceased, to sell real estate, 1860, 27.

Confirming and legalizing tax list and assessment roll for fiscal year ending June 30, 1861, and extending time for sheriff to collect delinquent taxes, 1861, 7.

Changing name of Brazos del Rio to Rio Vista, 1861, 12.

Granting certain wharf privileges to Paul Shirley and T. B. Storer and assigns, 1861, 204.

Separating office of county recorder from office of county clerk, 1861, 348.

Relative to certain school moneys, 1861, 414.

Authorizing D. D. Reeve and others to build wharf at Suisun city, 1861, 470.

Authorizing board of supervisors to levy additional road tax, 1862, 31; 1863, 772.

To legalize and provide for collection of delinquent taxes due to Benicia city, 1862, 36.

Authorizing construction and maintenance of wharf on Sacramento river, 1862, 41.

Authorizing B. Nickerson and others to construct and maintain wharf, 1862, 214.

Creating contingent fund, 1862, 239.

Authorizing M. A. Wheaton and others to establish and maintain ferry, 1862, 495.

Concerning records of fees and duties of certain officers, 1863, 182.

Regulating fees of certain officers, 1863, 190.

Authorizing and requiring county superintendent of common schools to apportion money to Rio Vista school district, 1863, 302.

Fixing salary of county superintendent of public schools, 1863–4, 150.

In relation to roads and road-masters, 1863–4, 214.

Establishing pilots and pilot regulations for Mare island and Benicia, 1863–4, 389.

Concerning records of district court of seventh judicial district in and for Solano county, 1863–4, 477 (refers to 1863, 260).

Terms of county and probate courts, 1865–6, 39.

To subscribe to San Francisco and Marysville Railroad Company, 1865–6, 46.

To levy additional road tax, 1865–6, 48.

To establish steam-ferry between Vallejo and Mare island, 1865–6, 147.

To develop agriculture and construct canal, 1865–6, 451.

Division into assessment districts, 1865–6, 462; 1867–8, 103.

Location and survey of highway from Suisun city to Knoxville, 1865–6, 616.

To pay claim of A. Lovell, 1865–6, 628.

Franchise to J. Forney to maintain ferry, 1865–6, 782.

Franchise to E. Hilton and others to build wharf, 1865–6, 808.

To transcribe and preserve records, 1865–6, 830.

Supervisors to pay claim of J. Opperamn, 1867–8, 6.

To levy additional road tax, 1867–8, 32.

To audit and settle certain claims, 1867–8, 98.
Terms of county and probate courts, 1867–8, 102.
To subscribe to San Francisco and Marysville Railroad Company, 1867–8, 331.
Roads and road-masters, 1867–8, 405.
Supervisors' compensation, 1867–8, 449.
Assessors' compensation, 1867–8, 449.
Fees and salaries, 1867–8, 448; 1869–70, 148.
To establish a steam-ferry, 1867–8, 600.
Wharf franchise to A. M. Currier at Vallejo, 1867–8, 615.
Wharf franchise to Virginia-street Wharf Company, 1867–8, 673.
Wharf franchise to P. K. Hubbs and others, 1867–8, 701; 1869–70, 101.
Trustees of Vallejo school district to borrow money, 1869–70, 85.
To confirm action of trustees, 1869–70, 248.
Act in relation to herding sheep, 1869–70, 304.
For the relief of Mary Likins and others, 1869–70, 351.
To transfer money from one fund to another, 1869–70, 414.
To levy additional road tax, 1869–70, 396.
Franchise to D. N. Darlington and others for wharf, 1869–70, 441.
For relief of A. Roberts, sheriff, 1869–70, 442.
To levy additional road tax, 1871–2, 4.
Additional notaries public, 1871–2, 24.
Duties and compensation of certain officers, 1871–2, 624.
Improvement of streets in Suisun city, 1871–2, 658.
In third congressional district, 1871–2, 714.
To adjust accounts of swamp-land district 18, 1871–2, 757.
As to herding of sheep, 1871–2, 890.
Protection from overflow of Putah creek, 1871–2, 941; 1873–4, 84.
Duties of board of education of Vallejo township, 1873–4, 160; 1875–6, 9.
To quiet title to certain lands, 1873–4, 329.
For relief of Center school district, 1873–4, 332.
To unite Putah school district and Yolo school district, 1873–4, 350.
In nineteenth senatorial district, 1873–4, 369.
Relative to powers of supervisors, 1873–4, 602.
Trustees of Benicia to purchase certain land, 1873–4, 708.
To exempt firemen from poll-tax, 1873–4, 731; 1875–6, 287.
Relating to swamp-land district 18, 1873–4, 759.
To locate county seat, 1873–4, 783.
To protect agriculture, 1873–4, 845.
To levy a road tax, 1873–4, 868.
Regulating official salaries, 1873–4, 869; 1875–6, 56.
Making recorder ex officio auditor, 1875–6, 14.
Redemption of certain bonds, 1875–6, 14.
Annexing Wood island, Sacramento county, to Rio Vista school district, 1875–6, 32.
For providing a new great register, 1875–6, 181.
In relation to highways, 1875–6, 316, 817.
For establishment and maintenance of branch county jail, 1875–6, 530.
Fixing terms of county and probate courts, 1875–6, 649.
For relief of Elijah True, 1875–6, 806.
Relating to office of county auditor, 1877–8, 156.
Authorizing supervisors to erect fire-proof building for records, 1877–8, 158.
For payment of debt against Fairfield school district, 1877–8, 212.
To fund certain indebtedness, 1877–8, 283.
Amending act regulating salaries (sheriff and assessor), 1877–8, 536.
Transferring part of Sutter island to Slough school district, 1877–8, 591.
Amending act relating to highways, 1877–8, 598.
To incorporate town of Dixon, 1877–8, 712.
To create the Sacramento River Drainage District, 1877–8, 987.
City of Benicia.—Incorporating city of Benicia, 1850, 119; 1851, 357.
Second act incorporating city, 1851, 348; 1854, 63; 1859, 314.
Authorizing Pacific Mail Steamship Company to hold, use, and occupy certain lands, 1858, 138.
Giving consent to the purchase of certain lands by the United States (600 acres adjoining Benicia, used and occupied for military purposes), 1855, 45.
Ceding certain property to city (water-front), 1855, 239.
Establishing pilots and pilot regulations for port and harbor, 1856, 62 (refers in repealing section to 1850, 48).
Authorizing mayor to enter into agreement with S. C. Hastings for exchange of certain property for school purposes, 1859, 95.
To repeal the several acts incorporating city, and provide for government thereof, 1859, 314; 1860, 118; 1861, 17; 1862, 231.
Authorizing Benicia Cemetery Association to close certain streets and alleys, 1862, 9.
Conferring further powers upon the trustees, 1862, 492.
Establishing pilots and pilot regulations (repealing all other acts), 1863–4, 389.
To settle title to lands, 1865–6, 107.
Incorporation act amended, 1867–8, 3, 206; 1869–70, 854; 1873–4, 777.
Trustees to refund debt, 1869–70, 225.
Authorizing borrowing of money, 1871–2, 296.
Granting further powers to trustees, 1875–6, 121.
Election of assessor, city marshal, and treasurer in Benicia, 1877–8, 400.
City of Vallejo.—Incorporation act of town of Vallejo, 1865–6, 431.
Incorporation of city, 1867–8, 618.
To define powers and duties of board of education, 1869–70, 388.
To confirm certain ordinances, 1869–70, 515.
Reincorporation of city of Vallejo, 1871–2, 566, 757; 1873–4, 360, 381; 1875–6, 25.
Powers and duties of board of education, 1871–2, 521.
Appropriation to Good Templars' Home for Orphans, 1871–2, 748.
Appropriation to Ladies' Benevolent Association, 1873–4, 898.
Authorizing board of education of Vallejo school district to borrow money, 1875–6, 68.
Amending acts reincorporating city of Vallejo, 1877–8, 398.

SONOMA COUNTY.

References to special and local acts.—Boundaries, 1850, 60; 1851, 178; 1852, 236; 1855, 150; 1861, 351; 1867–8, 42.

Seat of justice, 1850, 60; 1851, 178; 1852, 236; 1854, 72; 1855, 151; 1861, 586.

Incorporating city of Sonoma, 1850, 150; 1862, 460; 1863, 245.

Locating county seat anew, 1854, 72.

Providing for erection of county jail and certain bridges, 1855, 40; 1856, 136.

Providing for settling boundary line between Sonoma and Marin counties, 1856, 34.

Authorizing J. H. Hill, guardian of William R. Burns, a lunatic, to sell real estate of his ward, 1856, 50.

Extending time for presentation and allowance of claims against estate of S. A. Booke, deceased, 1856, 51.

Granting sheriff additional time to make annual settlement for collection of taxes for 1855, 1856, 101.

Fixing time of holding courts authorized to be held by county judge, 1856, 117; 1859, 225.

Authorizing board of supervisors to levy special tax for redemption of certain outstanding warrants, 1856, 136.

Concerning office of county recorder (separating it from office of county clerk), 1857, 20.

Granting privilege to J. A. Rudisall to erect wharf on Petaluma creek and collect wharfage, 1857, 32.

Fixing compensation of certain officers (district attorney, assessor, and deputies, sheriff, and treasurer), 1857, 256.

Legalizing and confirming assessment roll and publication of same, and extending time for collection of revenue, 1858, 28; 1859, 6.

Providing for transcribing and transferring certain records to Napa county, 1858, 65.

Concerning roads and highways, 1858, 227; 1859, 13; 1860, 25, 118 (refers to 1860, 42); 1861, 378; 1863–4, 519.

Allowing B. Hoen to sell certain real estate of minor heirs of William M. West, deceased, 1859, 58.

Authorizing administrator of Martin E. Cook, deceased, to execute certain conveyances, 1859, 72.

In relation to trial jurors in court of sessions and county court, 1859, 159; 1862, 247.

Regulating salaries of certain county officers county judge, district attorney, and supervisors), 1859, 185.

Authorizing retention of state's portion of poll-tax, etc., to be applied to construction and improvement of wagon-road from Cloverdale to Yreka, 1859, 323; 1861, 173.

Extending time for collection of taxes, 1860, 21; 1861, 16.

Authorizing and empowering county recorder to transcribe certain records and legalizing same, 1860, 109.

To fund debt and provide for payment, 1860, 111; 1861, 168.

Authorizing A. P. Overton and associates to construct wharf on Petaluma creek, 1860, 138.

Authorizing J. Chadbourne and J. Bacon to construct and maintain wharf at Lakeville, 1860, 209.

Relative to board of supervisors, 1860, 337.

Authorizing sale of real estate by guardians of minor heirs of Stephen Smith, deceased, 1861, 48.

Authorizing H. S. May and associates to construct wharf on Petaluma creek, 1861, 249.

For relief of E. L. Green, sheriff, 1861, 308.

Defining boundary line between Sonoma and Marin counties, 1861, 351.

To relocate county seat by qualified voters, 1861, 586.

Providing for construction of public road from Petaluma to Bloomfield, 1862, 90.

Providing for transcribing records of surveys, 1862, 53.

Authorizing J. B. Price and associates to construct and maintain turnpike from Cloverdale to Sanel, and to charge and collect toll, 1862, 101; 1863, 502.

Granting right to construct turnpike between Petaluma and Santa Rosa, 1862, 169.

Regulating fees of offices, 1862, 174.

Granting H. J. May and others right to lay railroad track along streets in Petaluma and through public road, 1862, 295; 1863, 234.

Granting to T. S. Benoiste and associates right to construct and maintain wagon-road, 1862, 429.

Legalizing delinquent tax lists for 1859, 1860, 1861, and 1862, 1862, 567.

For payment of expenses incurred in executing certain writs of restitution, 1863, 11.

Authorizing board of supervisors to appropriate money for map, 1863, 130.

Granting I. P. Smith and others right to construct wagon-road from Cloverdale to McDonald's house, in Mendocino county, etc., 1863, 233.

Extending to Sonoma county provisions of act to organize townships, etc., and submit same to vote, 1863, 242.

Conferring further powers on "Buena Vista Vinticultural Association," 1863, 324.

Legalizing survey of Green's addition to town of Santa Rosa, 1863, 495.

Providing for the better maintenance of indigent sick, 1863, 579.

To organize fire department of Santa Rosa, 1863, 742.

Authorizing board of supervisors to levy additional tax for road purposes, 1863, 763.

To provide for and define manner of collecting tax to build school-house in "Court-house district," 1863–4, 152.

Granting right of way over certain lands for construction of wagon-road to G. Shaul and others, 1863–4, 168.

Fixing salary of clerk of board of supervisors, 1863–4, 313.

Fixing compensation of board of supervisors, 1863–4, 319.

Conferring certain powers on board of supervisors (to pay J. B. Raney for board and lodging of sheriff's posse), 1863–4, 319.

To fund debt, 1865–6, 47.

Road from Bloomfield to Beck's school-house, 1865–6, 152.

Turnpike from Cloverdale to Stanley's ranch, 1865–6, 158.

Roads and highways, 1865–6, 176; 1867–8, 703; 1869–70, 502, 650.

Time of holding county and probate courts, 1865–6, 198; 1867–8, 537.

To prevent stallions from running at large, 1867–8, 70.

Compensation of supervisors, 1865–6, 487.

To improve Petaluma creek, 1865–6, 487.

To prevent destruction of fish, 1867–8, 13.
Boundaries of, 1867–8, 42.
Wharf franchise at Lakeville, 1867–8, 157.
Incorporation of Santa Rosa, 1867–8, 170.
Incorporation of Healdsburg, 1867–8, 170.
To donate lands to railroad, 1867–8, 189.
Municipal elections in Santa Rosa, 1867–8, 378.
Supervisors' compensation, 1867–8, 449.
Assessors' compensation, 1867–8, 449.
To establish board of commissioners for Sonoma city, 1867–8, 576.
Superintendent of public instruction to be member of state board of education, 1869–70, 824.
Fees and salaries, 1867–8, 448; 1869–70, 148.
Wharf franchise granted to W. Bihler and others, 1867–8, 709.
Board of school trustees to borrow money, 1869–70, 15.
Create office of notary public, 1869–70, 55.
To prevent stallions from running at large, 1869–70, 68.
Transfer of funds, 1869–70, 103.
Act in relation to herding sheep, 1869–70, 304.
To confirm acts of Sonoma city council, 1869–70, 413.
To alter corporate limits of Santa Rosa, 1869–70, 473.
To provide for public road from Russian river, 1869–70, 502.
Leave of absence granted to district attorney, 1869–70, 416.
Translation of foreign records, 1869–70, 582.
Power of trustees of Sonoma college, 1869–70, 625.
Roads and highways in, 1869–70, 650.
Construction of hall of records, 1869–70, 675.
Wagon-road to Lakeport, 1871–2, 62.
For appointment of notary public at Cloverdale, 1871–2, 95.
To distribute revenue derived from tax on dogs, 1871–2, 157.
To incorporate town of Cloverdale, 1871–2, 164, 550; 1875–6, 171.
To regulate fence and pound districts, 1871–2, 203.
To sell certain land in pueblo of Sonoma, 1871–2, 239.
To prevent hunting and shooting on private grounds, 1871–2, 304.
To protect fish in Sonoma creek, 1871–2, 441.
To encourage agriculture, 1871–2, 442.
Concerning roads and highways, 1871–2, 496; 1873–4, 105, 762; 1875–6, 53.
Concerning fees and salaries, 1871–2, 583.
To reincorporate town of Santa Rosa, 1871–2, 628; 1873–4, 378; 1875–6, 251.
Salary of district attorney, 1871–2, 653.
In third congressional district, 1781–2, 714.
Authorizing Isaac Bluxome to remove human remains, 1871–2, 766.
To fix terms of county and probate courts, 1871–2, 844.
As to taking effect of certain parts of codes, 1871–2, 845.
As to herding of sheep, 1871–2, 890.
Appointment of additional notaries public, 1873–4, 30.
To fund certain indebtedness, 1873–4, 93; 1875–6, 5.
To fix fees of surveyor, 1873–4, 228.
Wagon-road from Healdsburg to Pine Flat, 1873–4, 335, 843.
Payment of debt on Washington school district, 1873–4, 358.
Twenty-first senatorial district, 1873–4, 369.
To regulate salaries, 1873–4, 382, 720; 1875–6, 576, 726.
For repayment of money erroneously paid to state, 1873–4, 442.
To raise additional funds in Court-house school district, 1873–4, 549.
Concerning ferries and toll-bridges, 1873–4, 581.
To amend charter of Healdsburg, 1873–4, 665; 1875–6, 90, 891.
To exempt firemen from poll-tax, 1873–4, 731; 1875–6, 287.
To prevent hunting and shooting on private grounds, 1873–4, 792.
Restricting the herding of sheep, 1873–4, 823.
To apportion school money, 1873–4, 896; 1875–6, 33.
Relative to treasurer's office, 1875–6, 11.
Concerning roads and highways, 1875–6, 270.
To establish and define powers and duties of board of education of city of Santa Rosa, 1875–6, 514.
To enable trustees of Healdsburg to subscribe for college building, 1875–6, 800.
Declaring Sonoma river navigable, 1877–8, 72.
Regulating fees and salaries, 1877–8, 129, 328.
In relation to division fences, 1877–8, 692.
Amending act establishing pueblo commissioners, 1877–8, 633.
Re-establishing Court-house school district, 1877–8, 752.
Correcting spelling of names of commissioners for city of Sonoma, 1881, 25.

City of Petaluma.—Incorporating town of Petaluma (under name of City of Petaluma), 1858, 140; 1859, 210, 336; 1862, 133; 1863, 568.
Granting right to city to improve the navigation of Petaluma creek, 1859, 214; 1861, 45.
Authorizing trustees of Petaluma school district to levy tax for certain purposes, 1860, 100.
Providing for construction of railroad from point on Petaluma creek into city, and for right of way for same, 1860, 265; 1861, 479.
To legalize survey (W. A. Eliason's) of city, 1861, 33.
Authorizing and requiring trustees to call election for certain purposes (for submitting question whether charter should be repealed), 1861, 43.
Authorizing trustees of Petaluma school district to levy tax for school purposes, 1861, 215.
Time extended for street-railroad, 1865–6, 568.
Authorizing trustees of Petaluma school district to levy tax to refund certain moneys paid by late trustees, 1861, 266.
Granting H. J. May and others right to lay a railroad track along certain streets, 1862, 295; 1863, 234.
Empowering board of trustees to levy special tax for benefit of fire department, 1863, 186.
Authorizing trustees of Petaluma school district to levy tax for school purposes, 1863, 355.
In relation to the recorder of city, 1863–4, 227.
Trustees to execute certain trust, 1867–8, 297.
Municipal elections to be held, 1867–8, 378.
Act to reincorporate, 1867–8, 383; 1873–4, 23, 357, 703; 1875–6, 288.
Board of education, powers and duties of, 1869–70, 95.

Powers of board of education, 1871-2, 5; 1875-6, 121.

Maintenance of bridge across Petaluma creek, 1871-2, 47.

To reincorporate city of Petaluma, 1871-2, 48; 1873-4, 865.

Bonds for agricultural park, 1873-4, 526.

To widen English street, 1875-6, 473.

For erection and maintenance of draw-bridge across Petaluma creek, 1875-6, 726.

Amending acts to widen English street in Petaluma, 1877-8, 203.

Amending act concerning Petaluma board of education, 1877-8, 291.

To provide a system of sewerage in Petaluma, 1877-8, 436.

SQUIRRELS AND GOPHERS.

There are in force in a few of the counties special and local acts designed for the destruction of squirrels and gophers. It is deemed proper to refer to the legislation on the subject and designate the laws in force and the counties in which applicable, as follows:

Yolo county.—An act to encourage the destruction of squirrels and gophers in certain counties of this state, and to provide for a bounty for the same, approved March 16, 1870; 1869-70, 316. This act provided for the levy of a tax and the payment of a bounty of five cents for every squirrel and ten cents for every gopher destroyed in the counties of Alameda, Contra Costa, Fresno, Stanislaus, Merced, San Joaquin, and Yolo.

The act was amended March 21, 1872, 1871-2, 474, and March 23, 1872, 1871-2, 532, so as to leave out the county of Fresno.

It was repealed so far as it related to the county of Alameda, by act of January 11, 1872; 1871-2, 18.

Section 2 of the above-mentioned act of March 16, 1870 (providing for the payment of bounties), was repealed as to Contra Costa county by act of April 1, 1872; 1871-2, 834.

It was superseded as to Stanislaus and San Joaquin counties by act of March 7, 1876; 1875-6, 143.

It was repealed as to Stanislaus county, by act of March 28, 1876; 1875-6, 513.

An act to encourage the destruction of squirrels, gophers, and other wild animals in the counties of Santa Clara and Monterey, and create a bounty therefor, approved March 26, 1870; 1869-70, 404. This act was much like the above-mentioned act of March 16, 1870, and applied only to the counties of Santa Clara and Monterey.

It was repealed so far as it related to the counties of Santa Clara, Monterey, and San Joaquin (the last-named of which it does not appear to have applied to), by act of March 11, 1874; 1873-4, 337.

It was again repealed as to Monterey county by act of March 20, 1874; 1873-4, 515.

It is therefore entirely repealed.

Napa county.—An act to encourage the destruction of squirrels, gophers, and other wild animals in the counties of Los Angeles, Napa, Merced, San Bernardino, and Santa Cruz, approved February 13, 1872; 1871-2, 92. This act resembled the above referred to act of March 26, 1870, and applied to the counties named in the title. It is presumed to have superseded the before-mentioned act of March 16, 1870, so far as the county of Merced is concerned.

It was repealed in whole April 16, 1880; 1880, 105.

It was repealed so far as it related to Los Angeles county by act of January 23, 1874; 1873-4, 34.

It was repealed as to Santa Cruz county by act of February 18, 1874; 1873-4, 129.

It was repealed as to San Bernardino county by act of March 26, 1874; 1873-4, 691.

It was superseded as to Merced county by act of March 7, 1876; 1875-6, 143.

It was repealed as to Napa county March 27, 1878; 1877-8, 569.

Alameda and Contra Costa counties.—An act to encourage the destruction of squirrels and gophers, approved March 20, 1872; 1871-2, 432. This act provided for the formation of bounty districts for the destruction of squirrels and gophers, and empowered the board of supervisors to fix bounties and levy district taxes for the payment thereof. It applied only to the county of Alameda, and seems to have been superseded by the following act:

An act to abate the squirrel nuisance in certain counties of the state of California, approved March 10, 1874; 1873-4, 321. This act applies only to the counties of Alameda and Contra Costa. It authorizes the board of supervisors to create squirrel-inspection districts and appoint inspectors, and provides for the poisoning of squirrels by owners of lands, and in case of their neglect, by the inspectors.

An act to amend the foregoing act of March 10, 1874, approved March 18, 1876; 1875-6, 338. This act amends sections 3, 7, 9 and 11, and repeals section 13 of the foregoing act, and took effect from passage.

Fresno, Kern, Merced, Monterey, San Benito, San Joaquin, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, Stanislaus, and Tulare counties.—An act to abate the squirrel nuisance in Stanislaus, Santa Cruz, San Joaquin, Merced, Fresno, San Benito, Tulare, San Mateo, Santa Clara, Monterey, and Kern counties, state of California, approved March 7, 1876; 1875-6, 143. This act requires owners of land within three miles of any cultivated field to keep his land clear of squirrels, and in case of neglect provides that the expenses and costs of doing so by the inspectors shall be a lien on such land. It provides for the creation of districts, appointment of inspectors, etc., and their duties, etc.

An act to make applicable a certain act to San Luis Obispo county, approved March 31, 1876; 1875-6, 637. This act made the above-mentioned act of March 7, 1876, applicable to San Luis Obispo county.

The following special and local acts were passed in 1878 and 1880: An act to provide for the extermination of squirrels in the county of San Mateo, approved March 9, 1878; 1877-8, 218.

An act to authorize the board of supervisors of Lake county to levy and collect a special tax for the extermination of squirrels in said county, approved March 23, 1878; 1877-8, 441.

An act to encourage the destruction of squir-

rels, gophers, and other wild animals in the counties of Los Angeles, Napa, Merced, San Bernardino, and Santa Cruz, approved February 13, 1872, 1871-2, 92, was repealed as to Napa county by act of March 27, 1878, 1877-8, 569, and repealed in whole by act of April 16, 1880; 1880, 105 (Ban. ed. 344).

An act to encourage the destruction of squirrels and gophers in the county of San Joaquin, and to provide for a bounty for the same, approved March 30, 1878, 1877-8, 773, was repealed by act of April 16, 1880; 1880, 120 (Ban. ed. 385).

An act to provide for the extermination of squirrels in certain counties (Los Angeles, Stanislaus, and Santa Barbara), approved March 30, 1878, 1877-8, 787, was repealed by act of March 6, 1880; 1880, 7 (Ban. ed. 14).

An act to provide for the extermination of squirrels in the county of Contra Costa, approved March 30, 1878; 1877-8, 815.

STALLIONS.

The Political Code, sec. 19, in continuing in force all acts in relation to lawful fences, estrays, and the trespassing of animals upon private property, seems to have continued in force the following acts concerning stallions:

An Act to prevent stallions from running at large in the county of Sacramento.

[Approved March 28, 1859, 149.]

Stallions not to run at large.

SECTION 1. From and after the passage of this act it shall not be lawful for the owner or owners of stallions to allow the same to run at large in the county of Sacramento.

Penalty.

SEC. 2. If any owner or owners, or the agent of such owner or owners, shall permit any animal, as aforesaid, contrary to the first section of this act, to run at large, it shall be lawful for any person injured thereby to bring suit before any justice of the peace, in the proper township, against the person or persons so offending, who, upon conviction, shall be fined in any sum not less than twenty dollars nor more than one hundred dollars, to be collected as fines are now collected by law.

In case of trespass.

SEC. 3. Should any such animal, as aforesaid, be found trespassing upon lands or possessory claims of another, the person owning the land or possessory claim may take up and safely keep such animal, and when so doing shall give the owner or owners thereof five days' notice that such an animal is in his or their possession; and if, at the expiration of the aforesaid time, the owner or owners, or the agent of such owner or owners, shall neglect or refuse to remove such animal and pay for all reasonable costs for keeping the same, then the owner or owners of the land or possessory claim may cause such animal to be emasculated; provided, however, that the emasculation of such animal shall not release the owner or owners thereof from the penalty imposed by section two of this act.

Advertisement when owner is unknown.

SEC. 4. Should the owner or owners of such animal be unknown, then in that case it shall be the duty of the person in whose possession the animal may be, to forthwith give notice, with a description of the animal, its marks or brands, in some paper published in the county, for three successive weeks, calling upon the owner or owners to come forward and claim his or their property; and if, at the expiration of one month thereafter, no such owner or owners shall appear, then it shall be the duty of the person having possession of such animal to deliver the same to the constable of the proper township, whose duty it shall be to publicly dispose of the same to the highest bidder; and after paying all expenses necessarily connected with such animal, to pay the remainder into the country treasury, to be credited to the common school fund; provided, how-

ever, that should the owner or owners make claim to such property previous to sale being made, nothing in this act shall be so construed as to exempt them from all the expenses incurred or from the penalties imposed therein.

SEC. 5. This act shall take effect from and after the first day of May, A. D. eighteen hundred and fifty-nine

An Act to extend the foregoing act of March 28, 1859.

[Approved March 20, 1866; 1865–6, 327.]

Act to extend to certain counties.

SECTION 1. An act to prevent stallions from running at large in the county of Sacramento, approved March twenty-eight, eighteen hundred and fifty-nine, is hereby extended to and made applicable to the counties of Sutter, Alameda, Yuba, El Dorado, Placer, Santa Cruz, Mariposa, Merced, Yolo, Stanislaus, Siskiyou, Plumas, Sierra, Calaveras, Amador, Santa Clara, Monterey, Mendocino, San Mateo, Sonoma, Nevada, and Alpine. [*Amendment, approved February* 14, 1870; *Statutes* 1869–70, 68; *took effect from passage.*]

Section 1 was previously amended by act of February 21, 1868; 1867–8, 70.

Sale of animals.

SEC. 2. Should the owner or owners of such animals be unknown, then in that case it shall be the duty of the person in whose possession the animal may be to forthwith give notice, with a description of the animal, its marks or brands, in some paper published in the county, for three successive weeks, or by posting notice in at least three conspicuous places for the same length of time, one of which notices shall be at the court-house door of the county, calling upon the owner or owners to come forward and claim his or their property; and if, at the expiration of one month thereafter, no such owner or owners shall appear, then it shall be the duty of the person having possession of such animal to deliver the same to the constable of the proper township, whose duty it shall be to publicly dispose of the same to the highest bidder, and after paying all expenses necessarily connected with such animal, to pay the remainder into the county treasury, to be credited to the county school fund; provided, however, that should the owner or owners make claim to such property previous to sale being made, nothing in this act shall be so construed as to exempt from all expenses incurred or from the penalties imposed therein.

SEC. 3. This act shall take effect and be in force from and after its passage.

The foregoing act of March 28, 1859, was extended and made applicable to the county of Mono by act of March 3, 1874; 1873–4, 228.

The following act is applicable throughout the state, without reference to the codes:

An Act to provide for the keeping of stallions and other animals.

[Approved February 2, 1872; 1871–2, 63.]

Limits prescribed for stallions and jacks—Penalty for violation of law.

SECTION 1. It shall not be lawful for any person to keep or let to mares any stallion or jack, within the limits of any town or village in this state, or within four hundred yards thereof, unless such person shall provide an inclosure so arranged as to obstruct the view from all the inhabitants of the town and vicinity as aforesaid. Any person so offending shall, upon conviction thereof before any recorder or justice of the peace, be fined ten dollars and costs for the first offense, and double that sum for each subsequent offense; and in the default of the payment of such fine, said offender so convicted shall be imprisoned in the county jail, at the rate of two dollars per day, until said fine has been fully satisfied.

Fines.

SEC. 2. All fines collected under this act shall be paid into the county treasury for the benefit of the general school fund of the county.

SEC. 3. This act shall be in force from and after its passage.

STAMPS.

An Act to provide for the redemption of unused and uncanceled stamps of the state of California, heretofore sold.

[Approved April 1, 1876; 1875-6, 727.]

This special act provides for the appropriation of ten thousand five hundred and forty-five dollars and forty-one cents with which to redeem unused and uncanceled state stamps issued under an act to provide revenue for the government of this state, approved March 9, 1861. It is not deemed of sufficient importance to give in full or do more than refer to it.

STANISLAUS COUNTY.

References to special and local acts.—Boundaries, 1854, 21, 148; 1855, 245; 1860, 34; 1867-8, 56.

Seat of justice, 1854, 21; 1861, 252; 1862, 86.

Creating Stanislaus county, defining boundaries, and providing for organization, 1854, 21, 148.

To establish permanent boundary line between Stanislaus and Tuolumne counties, 1855, 245.

Granting to sheriff additional time to make annual settlement for collection of taxes for 1855, 1856, 101.

Fixing compensation of county judge, 1859, 20.

Fixing compensation of district attorney, 1857, 20.

Authorizing board of supervisors to levy additional tax for county purposes, 1857, 67.

Making orders or warrants drawn on treasurer and payable out of county revenue receivable for county taxes and dues, 1857, 186; 1863-4, 218.

Changing manner of paying officers of election, 1858, 94.

Fixing compensation of members of board of supervisors, 1858, 132.

Annexing portion of San Joaquin county to Stanislaus county, 1860, 34, 267.

Authorizing removal of human remains by S. Bishop and others, 1861, 57.

For permanent location of county seat, 1861, 252.

Authorizing administratrix of George M. Bonds, deceased, to sell real estate 1861, 485.

Fixing times of holding terms of county court and court of sessions, 1861, 567.

Authorizing administrator of Albert Cutler, deceased, to sell real estate (refers to 1861, 15), 1862, 8.

Granting to Stanislaus Bridge and Ferry Company right to construct and maintain bridge or bridges across Stanislaus river, 1862, 19.

Submitting location of county seat to qualified electors, 1862, 86.

To appoint commissioners to adjust affairs of Stanislaus and San Joaquin counties, 1862, 514.

Allowing county clerk to reside out of county, 1863, 12.

Providing for construction of wagon-road from Sonoro to Aurora, 1863, 134, 761; 1863-4, 157.

Authorizing board of supervisors to take and subscribe twenty-five thousand dollars to stock of Stockton and Copperopolis Railroad Company, etc., 1863, 310.

Granting right to B. W. Hathaway and others to construct and maintain turnpike or toll-road from Sonora to state line in Mono county, 1863-4, 155.

To enable Sonora and Mono wagon-road commissioners to settle with county, 1863-4, 364.

Legalize and provide for collection of delinquent taxes, 1865-6, 145.

Compensation of sheriff, 1865-6, 198.

Roads and highways, 1865-6, 209.

To prevent stallions from running at large, 1865-6, 327; 1867-8; 70.

Official publications, 1865-6, 453.

Subscription to Stockton and Copperopolis Railroad Company, 1865-6, 543; 1867-8, 66.

Act concerning rodeos, 1865-6, 673.

Terms of district court, 1867-8, 618.

Boundaries defined, 1867-8, 56.

Supervisors' compensation, 1867-8, 449.

Assessors' compensation, 1867-8, 449.

Fees and salaries, 1867-8, 448; 1869-70, 148.

To provide for improvement of Stanislaus river, 1867-8, 684.

To be in fifth judicial district, 1867-8, 658.

For destruction of squirrels and gophers, 1869-70, 316; 1875-6, 513.

Act in relation to herding sheep, 1869-70, 304.

To protect agriculture and prevent trespass of animals, 1869-70, 410.

For the relief of T. E. Hughes, 1869-70, 727.

To locate county seat, 1869-70, 776.

To authorize F. B. Lewis to institute proceedings to recover real estate, 1869-70, 881.

To provide superintendent of schools with office, 1871-2, 35.

For erection of court-house and jail, 1871-2, 40, 669.

Salary of treasurer, 1871-2, 183.

Road and ford across Stanislaus river, 1871-2, 283.

School-house in Modesto school district, 1871-2, 313; 1873-4, 14.

Highway and ferry over San Joaquin river, 1871-2, 584.

Salary of district attorney, 1871-2, 654.

In fourth congressional district, 1871-2, 714.

As to herding of sheep, 1871-2, 890.

Repealing special road law, 1873-4, 22.

Advertising for sale of certain lands, 1873-4, 39.

Additional notaries public, 1873–4, 108.
To separate office of recorder from that of county clerk, 1873–4, 277, 448.
In fifth senatorial district, 1873–4, 366.
For the relief of George W. Branch, auditor, 1873–4, 442.
Concerning office of public administrator, coroner, etc., 1873–4, 537.
To fix compensation of school superintendent, 1873–4, 537.
Fees of witnesses in criminal cases, 1873–4, 732; repealed, 1875–6, 493.
Distribution and use of road tax, 1875–6, 31.
Granting C. F. Leavenworth right to supply Modesto with fresh water, 1875–6, 41.
To abate squirrel nuisance, 1875–6, 143.
For transfer of certain funds, 1875–6, 270.
To protect agriculture and prevent trespassing of animals, 1875–6, 373.
Conferring power on supervisors as to employment of counsel in certain cases, 1875–6, 390.
For purchase of toll-bridge over Stanislaus river at Knight's ferry, 1875–6, 406.
Collection of road poll-taxes, 1875–6, 570.
Permitting Nancy Williams to redeem certain lands sold to state for delinquent taxes, 1875–6, 623.
To create West Side irrigation district, 1875–6, 731, 885.
To regulate terms of county court, 1875–6, 802.
Extending time for publishing delinquent tax list, 1877–8, 64.
To protect agriculture and distrain trespassing animals, 1877–8, 164.
Providing means for payment of certain indebtedness, 1877–8, 257.
For construction of bridge over Tuolumne river at Modesto, 1877–8, 455.
To prevent hogs running at large in town of Modesto, 1877–8, 585.
Creating West Side irrigation district, 1877–8, 468.
To provide a new great register, 1877–8, 693.
For extermination of squirrels, 1877–8, 787.
Creating Modesto irrigation district, 1877–8, 820.
As to salary of county assessor, 1877–8, 1001.
Repealing act of 1874 for extermination of squirrels, 1880, 7 (Ban. ed. 14).
Amending act of 1874, for building schoolhouse in Modesto school district, 1880, 33 (Ban. ed. 183).

SUTTER COUNTY.

References to special and local acts.—Boundaries, 1850, 62; 1851, 176; 1852, 237; 1854, 19; 1856, 231; 1863–4, 301; 1865–6, 223; 1869–70, 294.
Seat of justice, 1850, 62; 1851, 176; 1852, 237; 1856, 142.
To appoint commissioners to determine amount of indebtedness of Sutter county chargeable to Placer county, etc., 1852, 242.
To fund debt and provide for payment, 1853, 189; 1857, 67; 1858, 292.
Authorizing board of supervisors to levy special tax for erection of public buildings, 1855, 78.
Concerning county judge, 1855, 288.
Altering and defining boundary lines of Colusa county, 1856, 124.
Submitting question of location of county seat to vote of people, 1856, 142.
Changing and fixing time of holding court of sessions, 1857, 250.
Concerning county records, 1858, 205.
Legalizing and confirming general and supplemental assessment rolls, etc., and extending time for collection of revenue, 1859, 6.
Fixing time for commencement of terms of county court and court of sessions, 1859, 97.
Authorizing board of supervisors to construct bridge across Feather river, 1859, 201; 1860, 21; 1861, 311; 1862, 15.
Authorizing board of supervisors to take and subscribe fifty thousand dollars to stock of San Francisco and Marysville Railroad Company, etc., 1859, 247.
Extending time for tax collector to collect taxes and make final settlement with auditor, 1860, 14.
For opening and repairing roads, 1860, 150; 1861, 314.
Extending time for collecting taxes, 1861, 1.
Authorizing administrator of R. B. Sherrard, deceased, to sell real property, etc., 1861, 71.
Authorizing district attorney to appoint deputies, 1862, 5; 1863, 95.
Authorizing board of supervisors to levy special tax for repair of court-house, 1862, 26.
Providing for public administrator, 1862, 43; 1863, 23.
Requiring county judge to reside at county seat, 1863, 101.
Extending to Sutter county act to organize townships, etc., 1863, 242.
Exempting county from act concerning estrays, 1863–4, 29 (referring to 1863, 697).
Providing for time of holding county court and probate court, 1863–4, 41.
Authorizing board of supervisors to construct bridge and build road across Butte creek slough, 1863–4, 146.
Fixing salary of superintendent of public schools, 1863–4, 215.
Defining boundary line of county, 1863–4, 301.
Additional tax for county purposes, 1865–6, 43, 434.
Terms of district court, 1865–6, 79; 1867–8, 95.
Supervisors to construct bridge across Feather river, 1865–6 110.
Boundaries defined, 1865–6, 223; 1869–70, 294.
Act concerning estrays, 1865–6, 279.
Compensation of supervisors, 1865–6, 286.
To prevent stallions from running at large, 1865–6, 327; 1867–8, 70; 1869–70, 68.
Roads and highways, 1865–6, 381.
Division into assessment districts, 1865–6, 586.
County assessor, office abolished, 1865–6, 588.
Levy of tax for swamp-land district, 1865–6, 832.
Act concerning jurors, 1867–8, 39.
Terms for district court, 1867–8, 96.
To give bonds to California Railroad Company, 1867–8, 155.
Bonds issued to Central Pacific railroad, 1867–8, 155.

Protection of public and private roads, 1867–8, 158.
Exempt from provisions of act of 1866, relating to public and private roads, 1867–8, 185.
To enter and condemn land for graveyard. 1867–8, 236; 1869–70, 472.
To protect land from overflow, 1867–8, 316; 1869–70, 757; 1871–2, 307, 734.
For payment of state's portion of salary of auditor, 1867–8, 370.
Supervisors' compensation, 1867–8, 449.
Assessors' compensation, 1867–8, 449.
Fees and salaries, 1867–8, 448; 1869–70, 148.
To open and repair roads, 1867–8, 504; 1869–70, 469.
To issue bonds for road purposes, 1869–70, 62.
Act in relation to herding sheep, 1869–70, 304.
Roads and highways, 1869–70, 463.
Road tax to be levied, 1867–8, 504.
To construct bridge across tule, 1869–70, 469.
Treasurer to transfer money to hospital fund, 1869–70, 568.
To fund indebtedness of levee district No. 1, 1869–70, 657.
To provide for the protection of lands, 1869–70, 757.
To protect lands from overflow, 1871–2, 233.
School-house in Yuba school district, 1871–2, 271.
For court-house and jail, 1871–2, 320.
To restore great register, 1871–2, 516.
As to work swamp-land districts 68, 69, and 70, 1871–2, 649, 719.
Salary of district attorney, 1871–2, 654.
In third congressional district, 1871–2, 714.
As to herding of sheep, 1871–2, 890.
Repealing special road-laws, 1873–4, 338.
In twenty-fifth senatorial district, 1873–4, 369.
As to levy district No. 1, 1873–4, 511.
Concerning roads and highways, 1873–4, 573.
As to funding of indebtedness for reclamation purposes, 1873–4, 585; 1875–6, 888.
Bridge across Stone road crossing, 1873–4, 693.
Payment of indebtedness registered against road fund, 1875–6, 17.
Fixing time for election of school trustees, 1875–6, 141.
For funding indebtedness of levee district No. 2, 1875–6, 155.
To apply a certain act as to transfer of funds, 1875–6, 249.
To legalize assessment for certain school tax in Yuba school district, 1875–6, 251.
For better protection of county treasury, 1875–6, 365, 637.
To protect agriculture and prevent trespassing of animals, 1875–6, 373.
To define boundary and provide government for levee district No. 2, 1875–6, 391.
Legalizing assessment of taxes in Winship school district, 1875–6, 403.
Authorizing trustees of Meridian school district to borrow money, 1875–6, 531.
As to fees of district attorney, see section 21 of act formed 1875–6, 599.
To redistrict North Butte, Buttesylvania, and Columbia school district, 1875–6, 636.
Validating assessments and assessment roll for year 1877–8, 1877–8, 5.
Relating to district school tax in North Butte school district, 1878–8, 86.
Ratifying acts of trustees of Meridian school district, 1877–8, 214.
For cancellation of certain certificates of register of state land-office, 1877–8, 324.
Reorganized swamp-land district No. 70, 1877–8, 580.
For payment of indebtedness of North Butte school district, 1877–8, 731.
Organizing a levy district (Bear river district No. 1), 1877–8, 732.
Amending act concerning levy district No. 1, 1877–8, 914.
For transfer of certain funds, 1877–8, 1020.
For issuing bonds and paying indebtedness of levee district No. 1, 1880, 30 (Ban. ed. 180).

TAXES.

The state revenue laws up to 1865 were carefully collated in the General Laws, sec. 6148 et seq., and the several acts passed between 1864 and 1871 given in the Supplement, sec. 9255 et seq. Since then various acts have been passed, which are important as affecting vested rights; and it is deemed proper to refer to them in this place. There have also been passed, since the adoption of the Political Code, which embraces the present general revenue laws of the state, a number of revenue statutes, some of a general nature, others relating to revenue in special counties. These, with the exception of such as have been inserted in the Political Code, are given below under the respective subheads of: 1. Revenue statutes of a general nature; 2. Revenue validating statutes; 3. Statutes relating to revenue in special counties. The acts first above mentioned as affecting the old revenue legislation may be referred to as follows:

An act to amend an act entitled "An act," etc. [amending section 82 of the revenue act of May 17, 1861, relating to licenses of peddlers], approved March 8, 1872; 1871–2, 295.

An act to amend an act entitled "An act," etc. [amending section 45 of the revenue act of May 17, 1861, relating to tax sales and deeds], approved March 16, 1872; 1871–2, 399.

1. Revenue Statutes of a General Nature.

An Act levying a tax for state purposes for the twenty-fourth and twenty-fifth fiscal years, and to provide for the enforcement thereof.

[Approved March 28, 1874; 1873–4, 746.]

State tax.

SECTION 1. There is hereby levied for state purposes, for the twenty-fourth fiscal year, a tax of fifty cents upon each one hundred dollars of property subject to taxation for that year within this state.

SEC. 2. There is hereby levied for state purposes, for the twenty-fifth fiscal year(s), a tax of fifty cents upon each one hundred dollars of property subject to taxation for that year within this state.

Force and effect.

SEC. 3. The levies of taxes in the preceding sections mentioned shall have the same force and effect as if they had been levied by a statute passed and in force before the commencement of each of said fiscal years.

Assessments validated.

SEC. 4. The assessment-books of the various counties of the state for each of said years, as delivered by the clerks of the board of supervisors to the auditors, are hereby validated in every respect, and no action whatever of any board of supervisors, or of equalization, had upon or in relation to anything thereon since said books were so delivered (except the acts of the various boards of supervisors in levying taxes for county purposes), shall be of any force or effect.

Collectors.

SEC. 5. Each tax collector in this state must, within twenty days after the passage of this act, make with the auditor of his county a final settlement in relation to his collections for the present fiscal year, and must at the same time return his delinquent list to the auditor.

Payments.

SEC. 6. Every voluntary payment heretofore made, upon any assessment, for either of said fiscal years, shall have the same force and effect as if made since the passage of this act, and the word "paid," marked upon the "assessment-book," or any "delinquent list," for either of said years, shall be prima facie evidence that the taxes by this act levied have been paid upon the property against which said word is marked.

Duplicate assessment-book.

SEC. 7. Within forty days after the passage of this act the auditor of each county in this state must make a "duplicate assessment-book" for each of said fiscal years; which duplicate must be a copy of the assessment-book for the year, as he received it from the clerk of the board of supervisors, except that he must not enter thereon any assessments, or taxes, marked on the assessment-book "paid." On said duplicate he must add up the valuations, and enter the total valuation of the property. He must then enter, in a separate money column, in the duplicate assessment-book, the respective sums, in dollars and cents (rejecting the fractions of a cent), to be paid as a state tax on each piece of property, at the rate of fifty cents on each one hundred dollars of its value, as fixed in said book, and must then foot up the column, showing the total amount of such taxes.

Delivery, etc.

SEC. 8. Within forty-five days after the passage of this act, the auditor of each county must deliver both of said "duplicate assessment-books" to the tax collector of this county, with a certificate attached that each is correctly made, and must take the collector's receipt therefor, and must charge the tax collector with the full amounts of the taxes thereon, and forthwith transmit, by mail, to the controller, a statement of the amount so charged.

Delinquent notice.

SEC. 9. Within ten days after the receipt of said books the tax collector must publish a notice that the taxes entered on said books will become delinquent on

the first Monday in July, eighteen hundred and seventy-four, and that unless paid prior thereto, twenty-five per cent will be added to the amount thereof.

Code.

SEC. 10. Sections three thousand seven hundred and forty-nine, three thousand seven hundred and fifty, three thousand seven hundred and fifty-one, three thousand seven hundred and fifty-two, three thousand seven hundred and fifty-three, three thousand seven hundred and fifty-four, and three thousand seven hundred and fifty-five of the Political Code are hereby made applicable to proceedings under this act.

Comparison, etc.

SEC. 11. On the second Monday in July, eighteen hundred and seventy-four, the tax collector of each county must attend at the office of the auditor, with both of said duplicates, and carefully compare them with the assessment-books, and every item marked "paid" on the duplicate must be marked "state tax paid" opposite the assessment on the original.

Delinquent list.

SEC. 12. The tax collector must at the same time deliver to the auditor, certified as correct, a complete "delinquent list" for each of said fiscal years. The lists must be as prescribed in section thirty-seven hundred and sixty of the Political Code, and such proceedings must be had as are required by section thirty-seven hundred and sixty-one of said code.

SEC. 13. The auditor must at once transmit said delinquent list to the controller of state.

Enforced collection.

SEC. 14. The controller, in the name of the people of the state of California, must at once enforce the collection of the taxes delinquent, the twenty-five per cent added, and the interest, in his discretion, either by civil actions, as such actions are prosecuted upon express contracts for the direct payment of money made and payable in this state, or by actions to enforce the lien of the assessment, as mortgage liens are enforced; and, except as otherwise expressly provided in this act, the Code of Civil Procedure is hereby made applicable to such actions.

Evidence.

SEC. 15. In every such action the delinquent list, or a copy thereof, certified by the controller, shall be prima facie evidence of the validity of the assessment, that the amount thereon stated is due, and of every fact necessary to maintain the action.

Moneys.

SEC. 16. Whenever any money is collected in any such action, it shall be paid into court, and of the amount of the taxes and percentage ten per cent shall be paid to the attorney employed by the controller to prosecute the action, and the balance, with the interest, shall be paid to the tax collector of the proper county. The costs shall be paid to the officers who rendered the services for which such costs were taxed.

Receipts.

SEC. 17. Whenever the clerk pays over to a tax collector any moneys so collected, he must take a receipt therefor in duplicate, file one in the papers relating to the case, and transmit the other to the auditor of the county of which the collector to whom the money was paid is an officer; and the auditor must

require the collector, at his next monthly settlement, to pay said money in to the county treasurer.

Code.

SEC. 18. Section four, thirty-seven hundred and eighty-nine, thirty-eight hundred and three, thirty-eight hundred and eighty-five, and thirty-eight hundred and eighty-eight of the Political Code, are made applicable to the construction of this act, and to proceedings had under it.

Limitation.

SEC. 19. There shall be no limitation as to the time in which actions under this act may be commenced.

Compensation.

SEC. 20. The auditors of the respective counties shall receive, to their own use, for services performed under this act, a reasonable compensation, to be audited and allowed by the board of examiners, and paid out of the state treasury.

Fees.

SEC. 21. The state shall not be responsible to or pay any county officer, except auditor, for any services performed under this act; but the fees for such services shall be taxed with the other costs in the action, and shall, when collected, be paid to the officers for their own use.

SEC. 22. This act shall be in force from and after its passage.

An Act in relation to taxation of solvent debts other than those secured by mortgages or other liens.

[Approved March 28, 1874; 1873–4, 753.]

The supreme court, at the January term, 1876, in the case of *People* v. *Hibernia Savings and Loan Society*, 51 Cal. 243, having declared the tax on solvent debts unconstitutional, the above act was repealed by act approved April 3, 1876; Amendments 1875–6, 59; took effect from passage.

An Act to regulate proceedings for the collection of taxes, and to prevent oppressive costs.

[Approved March 15, 1876; 1875–6, 286.]

Suit for state taxes, costs not to attach when sum is ten dollars or less.

SECTION 1. In all cases when actions have been brought in the name of the state to recover taxes, under the provisions of an act entitled "An act levying state taxes for the twenty-fourth and twenty-fifth fiscal years, and to provide for the enforcement thereof," approved March twenty-eighth, eighteen hundred and seventy-four, and the amount of tax sued for is ten dollars or less, the defendant or defendants in each of said actions respectively shall be permitted to settle the same on the payment of the amount sued for, without costs; and upon the payment into court of the said amount, the defendant or defendants shall be entitled to have the action dismissed. No charge or cost of any kind shall be required of such defendant or defendants, by the clerk or any other person, either before or after such payment into court, any law to the contrary notwithstanding.

SEC. 2. This act shall take effect immediately.

An Act granting relief to tax-payers whose lands have been sold to the state.

[Approved April 1, 1876; 1875–6, 687.]

Redemption of lands sold for taxes of 1874–5, *to the state.*

SECTION 1. In all cases where real estate has been sold for delinquent taxes for the year eighteen hundred and seventy-four, eighteen hundred and seventy-

five, and of which the state has become the purchaser, the person whose real estate was thus sold, or his successor in interest, shall, within one year after the passage of this act, have the right to redeem such real estate by paying to the county treasurer of the county wherein the real estate is situated the amount of taxes due thereon, as also all taxes which were a lien on such real estate at the time such real property became delinquent, together with all costs and expenses which may have accrued by reason of such delinquency, as also the costs and expenses of such redemption; and upon such payment being made, the county treasurer shall, in the name of the people of the state of California, execute a conveyance, conveying to such delinquent, or his successor in interest, all the right, title, and interest of the state in and to such real estate which the state holds by reason of such sales for taxes; and in all such cases, if separate parcels of lands belonging to different owners, or in case where the property belonged to persons deceased, his or their executors or administrators have been assessed and sold together, said treasurer shall, upon the request of any such owner, executor, or administrator, segregate the tax, costs, and expenses, and apportion its proportion thereof upon any separate parcel of such land, and upon payment by such owner, executor, or administrator, of the amount so apportioned, such parcel shall be conveyed to him; provided, that nothing contained herein shall apply to lands formerly owned by the state and by it sold, but for which payment in full shall not have been made at the time of such delinquency.

SEC. 2. This act shall be in force from and after its passage.

An Act granting relief to tax-payers whose lands have been sold to the state.

[Approved April 1, 1878; 1877-8, 951.]

Redemption of land sold for taxes.

SECTION 1. In all cases where real estate has been sold for delinquent taxes, and the state has become the purchaser, and has not disposed of the same, the person whose estate has been sold, or his heirs, executors, administrators, or other successors in interest, shall, within one year after the passage of this act, have the right to redeem such real estate by paying to the county treasurer of the county wherein the real estate is situated the amount of taxes due thereon at the time of such sale, with interest thereon at the rate of one per cent a month, and also all taxes that were a lien upon said real estate at the time said taxes became delinquent, and also for each year since the sale, for which taxes on said land have not been paid, an amount equal to the percentage of state and county tax for that year, upon the value of the said real estate as assessed for the year of the sale, with interest from the first day of January of each of said years, respectively, at the same rate; and also all costs and expenses, and fifty per cent penalty, which may have accrued by reason of such delinquency and sale, and the costs and expenses of such redemption, as hereinafter specified. The county auditor shall, on the application of the person desiring to redeem, make an estimate of the amount to be paid, and shall give him triplicate certificates of the amount, specifying the several amounts thereof, which certificates shall be delivered to the county treasurer, together with the money; and the county treasurer shall give triplicate receipts, written or indorsed upon said certificates, to the redemptioner, who shall deliver one of said receipts and certificates to the state controller, and one to the county auditor, taking their receipts therefor. The county treasurer shall settle for the moneys received as for other state and county moneys. The county auditor shall be paid by the redemptioner, for making out said estimates, the sum of two dollars. Upon

the payment of the money specified in said certificates, and the giving of the receipts aforesaid, by the treasurer, controller, and auditor, any deed that may have been made to the state shall become null and void, and all right, title, and interest acquired by the state under or by virtue of the tax sale shall cease and determine. The receipts of the county treasurer, controller, and county auditor may be recorded in the recorder's office of the county in which said real estate is situated, in the book of deeds, and the record thereof shall have the same effect as that of a deed of conveyance. This act shall not apply to school lands, where the full amount of one dollar and twenty-five cents ($1.25) per acre has not been paid to the state therefor.

SEC. 2. This act shall take effect from and after its passage.

An Act granting relief to tax-payers whose lands have been sold to the state.

[Approved March 15, 1880; 1880, 9 (Ban. ed. 29).]

Redemption of real estate sold for delinquent taxes.

SECTION 1. In all cases where real estate has been sold for delinquent taxes, and the state has become the purchaser, and has not disposed of the same, the person whose estate has been sold, or his heirs, executors, administrators, or other successors in interest, shall, within one year after the passage of this act, have the right to redeem such real estate by paying to the county treasurer of the county wherein the real estate is situated the amount of taxes due thereon at the time of said sale, with interest thereon at the rate of seven per cent per annum, and also all taxes that were a lien upon said real estate at the time said taxes became delinquent, and also for each year since the sale, for which taxes on said land have not been paid, an amount equal to the percentage of state and county tax for that year upon the value of the said real estate assessed for the year of the sale, with interest from the first day of January of each of said years, respectively, at the same rate; and also all costs and expenses, and fifty per cent penalty, which may have accrued by reason of such delinquency and sale, and the costs and expenses of such redemption, as hereinafter specified.

DUTY OF AUDITOR.

The county auditor shall, on the application of the person desiring to redeem, make an estimate of the amount to be paid, and shall give him triplicate certificates of the amount, specifying the several amounts thereof, which certificates shall be delivered to the county treasurer, together with the money, and the county treasurer shall give triplicate receipts, written or indorsed upon said certificates, to the redemptioner, who shall deliver one of the said receipts to the state controller, and one to the county auditor, taking their receipts therefor. The county treasurer shall settle for the moneys received as for other state and county moneys.

FEE.

The county auditor shall be paid by the redemptioner for making out said estimates the sum of two dollars. Upon the payment of the money specified in said certificate and the giving of the receipts aforesaid by the treasurer, controller, and auditor, any deed that may have been made to the state shall become null and void, and all right, title, and interest acquired by the state under or by the virtue of the tax sale shall cease and determine. The receipts of the county treasurer, controller, and county auditor may be recorded in the recorder's office of the county in which said real estate is situated, in the book of deeds, and the record thereof shall have the same effect as that of a deed of reconvey-

ance. This act shall not apply to school lands when the full amount of one dollar and twenty-five cents per acre has not been paid to the state therefor.

SEC. 2. This act shall take effect from and after its passage.

2. Revenue Validating Statutes.

An Act to legalize and confirm certain notices of tax sale and the tax sale made in pursuance thereof.

[Approved February 21, 1874; 1873-4, 140.]

Time of sale for delinquent taxes in eighteen hundred and seventy-four.

SECTION 1. The proceedings of tax collectors in the several counties and revenue districts in this state in the year eighteen hundred and seventy-four, in advertising sales of property for delinquent taxes, to commence on the fourth Monday of February, eighteen hundred and seventy-four, are hereby confirmed and made valid, and sales made on that day, pursuant to such notices, shall not be affected by reason of said fourth Monday being a legal holiday.

SEC. 2. This act shall take effect and be in force from and after its passage.

An Act legalizing the state tax and assessments in the several counties in eighteen hundred and seventy-two and eighteen hundred and seventy-three.

[Approved March 28, 1874; 1873-4, 749.]

Assessments of eighteen hundred and seventy-two and eighteen hundred and seventy-three validates.

SECTION 1. No irregularity, informality, or error in the description of the property, or other informality in the assessments for state, county, or municipal taxes made by the county, district, or city assessors, in the several counties of this state, in the years eighteen hundred and seventy-two and eighteen hundred and seventy-three, if it can be ascertained by competent evidence what is intended, shall invalidate such assessments; but the same, notwithstanding such informality, irregularity, or errors, are hereby made good and valid; and the acts of the state board of equalization, in fixing the rate of tax to be levied for state purposes in said years, are hereby ratified and confirmed.

SEC. 2. This act shall take effect immediately.

An Act to equalize and confirm the levy, equalization, assessment roll, publication, and sale of real estate for the non-payment of taxes.

[Approved March 30, 1874; 1873-4, 832.]

Proceedings of eighteen hundred and seventy-three and eighteen hundred and seventy-four legalized.

SECTION 1. The levy, equalization, assessment roll, publication, and sale of delinquent taxes for the fiscal year eighteen hundred and seventy-three and eighteen hundred and seventy-four, is hereby legalized and confirmed, and shall have the same force and effect as though it had been made as provided by law.

Cumulative remedies.

SEC. 2. In case different remedies are given for the enforcement or collection of taxes in the same or different statutes, such remedies must be regarded as cumulative, and either of the remedies given may be pursued, and more than one remedy may be pursued at the same time.

SEC. 3. This act shall take effect on and after its passage.

An Act to legalize and confirm the apportionment and levy of taxes in the city of San Diego.

[Approved March 22, 1876; 1875–6, 390.]

Action of trustees confirmed.

SECTION 1. The rates and levy of taxes upon all property, real and personal, in the city of San Diego, for the general revenue and interest funds, for the fiscal year eighteen hundred and seventy-four, as made and adopted by the board of trustees of said city, October fifth, eighteen hundred and seventy-four, are hereby legalized and confirmed, and shall have the same force and effect as though they had been fixed by ordinance regularly published.

SEC. 2. This act shall take effect and be in force from and after its passage.

3. Statutes Relating to Revenue in Special Counties.

An act to enable the city and county of San Francisco to conform to so much of the Political Code as relates to the public revenue, approved March 30, 1872; 1871–2, 773. This act provided for the issue and sale of bonds for a sum not exceeding nine hundred thousand dollars, to be known as "San Francisco temporary revenue bonds;" the proceeds to be applied for municipal purposes.

An act to provide for the collection of certain unpaid taxes in Fresno county, approved March 4, 1874; 1873–4, 269. This act had for its object a correction of the description in the assessment and equalization of taxes upon certain lands of Lux and Miller in 1872, and provided for further proceedings in relation to the collection of such taxes.

An act in relation to the revenue of the county of Amador, approved March 18, 1874; 1873–4, 446. This act provided for the levy of taxes (except for road, school, and state purposes) in Amador county.

An act to extend the time for selling property for the delinquent taxes of 1873–4 in the county of Alpine, approved March 18, 1874; 1873–4. This act extended the time referred to in the title to July 1, 1874.

An act to extend the time for selling property for delinquent taxes in the county of Alpine, approved March 22, 1876; 1875–6, 389. This act extended the time for each year to July 1.

See the various counties.

An Act in relation to the assessment and collection of taxes upon personal property in the city and county of San Francisco.

[Approved March 18, 1874; 1873–4, 477.]

Exempted.

SECTION 1. The city and county of San Francisco is hereby exempted from the provisions of the Political Code relating to the assessment and equalization of personal property for taxation, and the collection of taxes thereon, but only in so far as to give force and effect to the provisions of this act hereinafter contained.

Assessment.

SEC. 2. The assessor of said city and county must complete the assessment of personal property on or before the first Monday of June in each year, and enter the same in a separate assessment-book, to be known as "the assessment-book of personal property." As soon as completed, the said assessment-book must be delivered to the clerk of the board of supervisors, who must immediately give notice thereof, and of the time the board will meet to equalize said assessment, by publication in some daily newspaper printed in said city and county; and in the mean time, until the board meets to equalize said assessment, the assessment-book must remain in his office, for the inspection of all persons interested.

Equalization.

SEC. 3. The board of supervisors shall meet on the second Monday in June, and must examine and equalize said assessment in the same manner as required by the Political Code, and must complete the equalization of said assessment on or before the fourth Monday in June; and the clerk of the board must record, in a book to be kept for that purpose, all changes, corrections, and

orders made by the board, and, during its session, must enter in said assessment-book all changes and corrections made by the board, and must deliver the said assessment-book, so corrected, to the auditor of said city and county, on the fourth Monday of June, with an affidavit in substance the same as that required by section thirty-six hundred and eighty-two of the Political Code.

Levy of tax.

SEC. 4. The board of supervisors must, on the fourth Monday of June, fix the rate of city and county taxes for the current fiscal year, and the auditor must, on or before the second Monday of July, prepare and deliver to the tax collector a copy of said corrected assessment-book, to be styled "duplicate assessment-book of personal property," in which shall be computed and entered, in separate money columns, the respective sums, in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, and to which must be attached his affidavit, subscribed and sworn to as follows: "I, ——, auditor of the city and county of San Francisco, do swear that I received the assessment-book of the personal property of the city and county of San Francisco, from the clerk of the board of supervisors, with his affidavit thereto affixed, and that I have corrected it and made it conform to the requirements of the board of supervisors; that I have reckoned the respective sums due as taxes, and have added up the columns of valuations and taxes, as required by law, and that the copy to which this affidavit is attached is a true, full, and correct copy thereof." Said duplicate assessment-book must contain columns for entry, as hereinafter provided, for the state tax, upon the property therein assessed.

Delivery.

SEC. 5. The said duplicate assessment-book must thereupon be delivered to the tax collector; and all the acts required by the Political Code to be performed by the auditor and tax collector in relation to the duplicate assessment-book, and the taxes therein mentioned, must be performed by said officers, in relation to the assessment-book herein provided, so far as the same can be made applicable.

Notice.

SEC. 6. The tax collector, immediately upon receiving said assessment-roll, must publish in one or more of the daily newspapers of said city and county that the taxes therein mentioned are due and payable at the office of the tax collector of said city and county, and will become delinquent on the first Monday of August, and that unless paid on or before the last-mentioned date five per cent will be added to the amount thereof. The tax collector may, at any time after said taxes become delinquent, collect the same by seizure and sale of any personal property owned by the delinquent, and in proceedings for that purpose must be governed by sections from thirty-seven hundred and ninety-one to thirty-seven and ninety-six, inclusive, of the Political Code.

Levy of state and county tax.

SEC. 7. On the Wednesday following the fourth Monday of September the tax collector must return the said duplicate assessment roll to the auditor, who must, at the time provided in the Political Code for computing and entering the state and county taxes, add to or deduct from the valuation of the property enumerated in said assessment-book any per centum which may have been required by the state board of equalization, and compute the state taxes to be paid on said personal property, and enter the same, with all delinquent taxes

which may appear in said book, in the proper columns. After completing such computations and entries, the auditor must annex his affidavit to said book, stating that he has truly and correctly made all reductions and additions required by the state board of equalization, and computed, entered, and added all the state taxes, and all the delinquent city and county taxes, and the per centum due on the property therein enumerated, and return the same to the tax collector at the time when the duplicate assessment-book of taxes upon real estate is required by law to be delivered.

How collected.

SEC. 8. The tax collector must collect said state taxes and said delinquent city and county taxes and per centum, at the time and in the same manner as he is by law required to collect other state and county taxes.

Omitted assessments.

SEC. 9. The assessor may, at any time prior to the fourth Monday in October in each year, specially assess any property which may have been omitted, and which shall not be entered upon the regular assessment roll; and if he makes any such special assessment he shall forthwith deliver a copy thereof to the tax collector, and the original to the auditor, who shall charge the tax collector with the amount of taxes due thereon; and all such special assessments shall be as valid, and shall have the same force and effect, as regular assessments.

SEC. 10. All the provisions of the Political Code and other laws relating to state and county revenue, except where they are in conflict with, are made part of this act.

SEC. 11. This act shall take effect immediately.

An act to provide for the collection of delinquent taxes for the twenty-fourth, twenty-fifth, and twenty-sixth fiscal years, in the city and county of San Francisco, approved April 1, 1876; 1875–6, 820. This act validated the assessments upon all property except solvent debts in San Francisco for the years 1873, 1874, and 1875, and provided for suits to collect the delinquent taxes of those years.

An act to provide for the collection of delinquent taxes in the city and county of San Francisco, approved April 3, 1876; 1875–6, 903. This act validated the assessment upon all property except solvent debts for the years 1868 and 1869, and provided for suits to collect the delinquent taxes of those years.

An act to enforce the collection of poll-taxes in the county of Calaveras, approved March 20, 1874; 1873–4, 494. This act provided for a county poll-tax of two dollars, and a hospital poll-tax of two dollars, in Calaveras county, and the collection thereof by the constables of that county.

An act authorizing the board of supervisors of Sierra county to levy taxes for county purposes, and for the payment thereof into certain funds, approved March 20, 1874; 1873–4, 510. This act authorized the levy of county taxes for the general fund and school fund of Sierra county, amounting together to one dollar and ninety cents on each one hundred dollars of valuation.

An act to provide for the payment of certain outstanding road warrants of Yolo county, and to provide for levying taxes for county purposes in said county, approved March 24, 1874; 1873–4, 572. This act, among other things, provided for the levy of a county tax not exceeding sixty-five cents on each one hundred dollars of valuation in Yolo county.

An act to levy taxes for county purposes in the county of El Dorado, approved March 30, 1874; 1873–4, 791. This act levied upon property in El Dorado county a tax amounting to one dollar and sixty-five cents upon every one hundred dollars of valuation for county purposes for the twenty-sixth fiscal year, and of one dollar and five cents upon every one hundred dollars of valuation for the twenty-seventh fiscal year.

An act to provide for the collection of certain unpaid taxes in the county of Modoc, approved March 30, 1874; 1873–4, 842. This act provided for the collection of unpaid taxes in Modoc county for the fiscal years 1872–3 and 1873–4.

The following special acts may be referred to:

An act to amend an act entitled "An act to enforce the collection of poll-taxes in the county of Calaveras, approved March 20, 1874, approved January 20, 1878; 1877–8, 35.

An act to extend the time for publishing the delinquent tax list in the counties of San Luis Obispo, Santa Barbara, San Benito, Ventura, Fresno, Tulare, Kern, Merced, Mariposa, Inyo, and Stanislaus, approved January 28, 1878; 1877–8, 64.

An act to levy taxes for county purposes, and to provide for the redemption of the bonded indebtedness of El Dorado county, approved February 13, 1878; 1877–8, 75.

An act legalizing the assessment-book and delinquent list in Los Angeles county, approved February 21, 1878; 1877–8, 103.

An act legalizing the state and county tax and assessments in the county of Nevada in

1877 and 1878, approved March 9, 1878; 1877–8, 197.

An act in relation to road, poll, and property tax in the town of Crescent City, in Del Norte county, approved March 9, 1878; 1877–8, 204.

An act authorizing a tax for the payment of grand and trial jurors in the county of Alpine, approved March 9, 1878; 1877–8, 215.

An act to legalize the assessment of taxes in the city and county of San Francisco, and to ratify and confirm a resolution of the board of supervisors of the city and county of San Francisco, approved March 19, 1878; 1877–8, 338.

An act to facilitate and equalize the collection of licenses in the city and county of San Francisco, approved March 23, 1878; 1877–8, 442.

An act to repeal an act entitled "An act to extend the time for selling property for delinquent taxes in the county of Alpine," approved March 22, 1876, approved March 30, 1878; 1877–8, 783.

An act regulating the collection of poll-tax in Merced county, approved March 30, 1878; 1877–8, 837.

See further the various counties.

TEHAMA COUNTY.

References to special and local acts.—Boundaries, 1856, 118, 222; 1857, 25, 109; 1859, 359.

Seat of justice, 1856, 119; 1857, 23, 144.

Creating Tehama county, defining boundaries, and providing for organization, 1856, 118, 96; 1857, 144.

To alter and define boundary lines, 1857, 25, 109; 1859, 359; 1863, 492.

Fixing time for holding court of sessions, county court, and probate court, 1857, 7.

Providing for taking sense of people upon question of removal of county seat from Tehama to Red Bluff, 1857, 23.

Concerning county judge (residence), 1857, 202; 1863, 101.

Legalizing assessment roll for 1857, and extending time for collecting revenue, 1858, 66.

Authorizing board of supervisors to levy special tax for building purposes, and to provide for payment of indebtedness, etc., 1858, 93.

Fixing salary of district attorney, 1858, 211.

Concerning office of public administrator, 1858, 297 (refers to 1856, 80).

Fixing time of holding court of sessions and county court, 1859, 128.

Granting right to construct bridge across Sacramento river at Red Bluff to J. Combs and associates, 1859, 133.

Authorizing recorder to transcribe certain records in Colusa, Shasta, and Butte counties, 1859, 151.

Regulating fees in office, 1859, 179 (refers to 1855, 81); 1863, 700.

Granting right to convey water in pipes to supply inhabitants of Red Bluff to J. Smart, 1860, 37; 1875–6, 120.

Authorizing board of supervisors to levy certain taxes and create contingent fund, 1860, 100; 1861, 122.

Providing for compensation of keepers of county jail, etc., 1860, 219.

Declaring streets and alleys in Red Bluff public highways, 1860, 343.

Legalizing survey of town of Red Bluff, 1861, 72.

Granting to J. C. Tiner and others right to supply people of Red Bluff with gas, 1861, 83.

Authorizing board of supervisors to remove remains from old graveyard in Red Bluff to new cemetery, and to levy tax to pay cost, 1861, 123; 1862, 33.

Authorizing board of supervisors to levy, assess, and collect certain taxes (for building fund), 1861, 176.

Organizing board of supervisors and districting the county, 1861, 260.

Legalizing levy of certain taxes for 1861, 1861, 353.

Authorizing board of supervisors to levy special tax and create redemption fund for payment of county indebtedness, 1861, 657; 1863, 700; 1863–4, 423.

Providing for public administrator, 1862, 43; 1863, 23.

Providing for construction of wagon-road from Sacramento river, opposite Red Bluff, to eastern boundary of state, near Honey lake, 1862, 220; 1863, 1, 177, 250.

Providing for care of indigent sick and levying tax therefor, 1862, 233; 1863, 482.

Requiring county judge to reside at county seat, 1863, 101.

Providing for pauper sick, 1863, 481.

Concerning official fees (salaries), 1863, 699; 1863–4, 347.

In relation to wagon-road of J. Bidwell and others from Chico to Honey lake valley, 1863–4, 185 (refers to 1863, 291).

To transfer certain moneys from general fund to Tehama county wagon-road interest and redemption fund, 1863–4, 188.

To provide for funding indebtedness, 1863–4, 283.

Authorizing formation of "Tehama County Stock-Breeders' Association," for improvement of horses and neat cattle, 1863–4, 289.

Resolution in regard to Nome Lackee Indian reservation, 1863–4, 549.

Salary of county judge, 1865–6, 98.

To levy taxes for county purposes, 1865–6, 115.

To prevent stallions from running at large, 1867–8, 70.

To abolish office of tax collector, 1865–6, 443.

Salaries and compensation of officers, 1865–6, 619; 1867–8, 780.

Assessor to perform duties as tax collector, 1867–8, 426.

Supervisors to levy tax for county purposes, 1867–8, 2.

Act concerning jurors, 1867–8, 39.

To reorganize board of supervisors, 1867–8, 78.

County judge to distribute town lots at Red Bluff, 1867–8, 107.

Special tax for construction of bridges, 1867–8, 130.

Fees and salaries, 1867–8, 448; 1869–70, 148.

Tax in Red Bluff school district, 1869–70, 379.

Terms of district court, 1869–70, 576.

For the support of schools, 1871–2, 130.

Levy of special tax for schools in Red Bluff, 1871–2, 356.

Tax for bridge purposes, 1871-2, 535.
Salary of district attorney, 1871-2, 654.
In third congressional district, 1871-2, 714.
As to canal companies, 1871-2, 732.
Relating to certain officers, 1871-2, 755.
Salaries and duties of assessor, 1871-2, 756.
To borrow money for Red Bluff school district, 1871-2, 764.
To support certain cemeteries, 1871-2, 872.
In relation to school fund, 1873-4, 2.
In twenty-ninth senatorial district, 1873-4, 369.
Concerning road poll-tax, 1873-4, 431.
To prevent hogs running at large, 1873-4, 776.
Making treasurer ex officio tax collector, 1873-4, 796; 1875-6, 232.
To redistrict county, 1873-4, 816.
To protect agriculture, 1873-4, 853; 1875-6, 643.
Authorizing school superintendent to apportion certain moneys and draw warrant for same, 1875-6, 1.
To take vote on question of "stock law," 1875-6, 18.
To provide for refunding the debt, 1875-6, 69.
Concerning partition fences, 1875-6, 207.
To incorporate town of Red Bluff, 1875-6, 637.
Repealing act to prevent hogs running at large in Red Bluff and Tehama, 1877-8, 79.
Amending act incorporating town of Red Bluff, 1877-8, 116.
Concerning road poll-tax and hospital poll-tax, 1877-8, 211.
Concerning trespassing animals, 1877-8, 176.
Concerning construction of bridge across Sacramento river, 1877-8, 532.
In relation to distribution of lots in Red Bluff by county judge, 1877-8, 602.

THISTLE.

An Act to prevent the propagation of the Scotch or Canada thistle in the counties of Humboldt, Siskiyou, Klamath, Del Norte, and Alameda.

[Approved March 2, 1872; 1871-2, 214.]

Permitting thistle-seed to disseminate on one's own land.

SECTION 1. It shall be unlawful for any person owning or possessing land in the counties of Humboldt, Siskiyou, Klamath, Del Norte, and Alameda to permit the Scotch or Canada thistle to mature and disseminate its seed on land so owned or possessed by such person.

Disseminating thistle-seed on land of another.

SEC. 2. It shall be unlawful for any person to knowingly sow or disseminate any seed of the Scotch or Canada thistle upon any land owned or possessed by another.

Misdemeanor.

SEC. 3. Any person, upon being duly convicted of a violation of either of the preceding sections of this act, shall be deemed guilty of a misdemeanor, and may be fined in any sum not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding three months.

Damages.

SEC. 4. Any person who shall sell or in any way dispose of any seed of the Scotch or Canada thistle to another, whether in the packing of goods, or in grain, or grass seeds, or otherwise, shall be liable to such person for all damages which may accrue to him by reason thereof, to be recovered by action in any court of competent jurisdiction.

Road overseer liable.

SEC. 5. Any road overseer in the county of Humboldt, Siskiyou, Klamath, Del Norte, and Alameda, who shall permit any seed of the Scotch or Canada thistle to mature within the boundary of any highway within his district, shall be deemed guilty of a misdemeanor, and upon conviction thereof may be fined in any sum not exceeding one hundred dollars. All fines collected under this act shall be paid into the county treasury for the benefit of the common-school fund.

Act to apply only.

SEC. 6. The provisions of this act shall apply only to the counties of Humboldt. Siskiyou, Klamath, Del Norte, and Alameda.

TOWN LANDS.

See section 4442 of the Political Code, and statutes thereto appended.

TRAINING-SHIP.

An Act to establish and maintain a training-ship in the city and county of San Francisco.

[Approved February 15, 1876; 1875–6, 54.]

Supervisors authorized to procure ship and necessary equipments.

SECTION 1. The board of supervisors of the city and county of San Francisco is hereby authorized to procure a ship, of suitable size and tonnage, with all the necessary tackle, furniture, and equipments, provided said ship can be obtained without expense to said city and county, on board of which to instruct boys in practical seamanship and navigation, to be called a training-ship. Said ship shall cruise at least fifteen days in each month, in order that the pupils may acquire a thorough knowledge of nautical evolutions by experience and practice. When not engaged in cruising, she shall be anchored in the bay of San Francisco, within the corporate limits of said city and county. Said board shall supply said ship with all the materials and implements necessary to give to said boys a proper and efficient nautical education; and the said board is hereby authorized to apply to the United States government for the use of a vessel and supplies for the purposes above mentioned, and to accept therefrom any vessel, together with its necessary tackle, furniture, and equipments, which the said government may assign to said city and county, to be used for the purposes contemplated by this act; and to accept the services of any officers or men which said government may detail for service on board of any such vessel, and upon such terms and conditions, consistent with the provisions of this act, as the said government may prescribe.

SEC. 2. The said board of supervisors shall provide accommodations on said training-ship for not less than two hundred boys at all times, and shall provide officers and instructors sufficient for their government. [*Amendment, approved March* 13, 1878; 1877–8, 233.]

Number of boys admitted.

SEC. 3. Of the total number of boys provided for by this act, one hundred may be admitted from the city and county of San Francisco, and one hundred from the other counties of the state of California, as may be determined by an advisory board, provided for in the next succeeding section of this act. [*Amendment, approved March* 13, 1878; 1877–8, 233.]

Advisory board.

SEC. 4. An advisory board, consisting of three members, to serve without compensation, shall be appointed by the governor of the state, at his earliest convenience after the passage of this act, to which board a report shall be made quarterly of the condition and operation of said training-ship by said standing committee of said board of supervisors. It shall be the duty of said advisory board to inspect said training-ship from time to time, as may be necessary, and to make such apportionment and such changes in the number of boys apportioned to each county (the county of San Francisco excepted), as may be found necessary to secure to the several counties of the state the full number of boys herein provided for. The population of each county shall form the basis of said apportionment. [*Amendment, approved March* 13, 1878; 1877–8, 233.]

Appropriation authorized.

SEC. 5. The board of supervisors of said city and county is hereby authorized and required to direct to be paid out of the general fund of said city and county, for the support and maintenance of said training-ship, a sum not exceeding twenty-five thousand dollars per annum, and an additional sum of twenty-five thousand dollars per annum is hereby appropriated out of the state treasury for the support and maintenance of said training-ship, and the state controller is hereby required to draw his warrant in favor of, and the state treasurer to pay to the city and county of San Francisco the said sum of twenty-five thousand dollars per annum for the purposes aforesaid, and the auditor of said city and county is hereby required to audit all claims passed by said board in pursuance of the provisions of this act, and the treasurer of said city and county is hereby directed to pay the same. [*Amendment, approved March* 13, 1878; 1877–8, 233; *took effect from passage.*]

Exemption from pilotage.

SEC. 6. The ship known as the training-ship shall be exempt from all charges for pilotage when going into or out of any port of this state. When the commander of said ship applies for the services of a pilot, said pilot refusing the same free of charge, the power appointing said pilot may revoke his license.

Repeal of old act.

SEC. 7. An act entitled "An act to establish and maintain a training ship or ships in the city and county of San Francisco," approved March sixteenth, eighteen hundred and seventy-four, and all acts or parts of acts, so far as the same may be inconsitent with the provisions of this act, are hereby repealed.

When act to take effect.

SEC. 8. This act shall take effect from and after its passage, and the board of supervisors of said city and county is hereby authorized to accept the ship Jamestown, or any vessel substituted therefor, from the government of the United States, if fully equipped for the purposes indicated in this act.

TRESPASSING ANIMALS.

See GOATS; HOGS; SHEEP; STALLIONS.

The Political Code, sec. 19, continued in force all acts in relation to lawful fences, estrays, and the trespassing of animals upon private property. The latter consist of the following general act, and a number of special acts applicable only to particular counties, as indicted below. The two most important of these special acts are given.

An Act to prevent the trespassing of animals upon private property.

[Approved March 31, 1855, 70.]

Damages for trespasses by animals.

SECTION 1. If any horse, mule, jack, jenny, hog, sheep, goat, or any head of neat cattle, should break into any ground inclosed by a lawful fence, the owner or manager of such animal shall be liable to the owner of such inclosed premises for all damages sustained by such trespass; and if the trespass be repeated, by neglect of the owner or manager of such animals, he shall, for the second and every subsequent offense or trespass, be subject to double the damages of such trespass to the owner of said premises.

Killing or injuring trespassing animals.

SEC. 2. If any owner or occupier of any grounds or crops trespassed upon by animal or animals entering upon or breaking into his or their grounds, whether inclosed by a lawful fence or not, shall kill, main, or materially injure the animal or animals so trespassing, he, she, or they shall be liable to the owner

of such stock for all damages; and for the cost accruing from a suit for such damages, when necessarily resorted to for their recovery; provided, the owner or occupier of such grounds and crops so damaged and trespassed upon may take up and safely keep, at the expense of the owner or owners thereof, such animals, for ten days, and if not applied for by the proper owner or owners before the expiration of ten days, the same may be posted under the "estray laws" of the state, and before restitution shall be had by the owner or owners of such animals, all damages done by them, as well also as the expense of posting and keeping them, shall be paid. Any justice of the peace in the township shall have jurisdiction of all such reclamation of animals, together with the damages, expense of keeping and posting the same, when the amount claimed does not exceed five hundred dollars.

Lands cultivated in common.

SEC. 3. When two or more persons shall agree to cultivate lands under one inclosure, neither of them shall place, or cause to be placed, any animal on his, her, or their ground, to the injury or damage of the other or others, but shall be liable for all damages thus sustained by the other or others; and if repeated after due notice is given, and for every such subsequent repetition, double damages. It shall not be necessary to prove any express agreement to cultivate under one inclosure, but the fact of such cultivation shall be deemed sufficient evidence of such agreement.

An act supplementary to the foregoing act of March 31, 1855, approved May 17, 1861, 474. This act (which was amended May 2, 1862, 480; April 25, 1863, 570; April 4, 1864; 1863–4, 459; and February 28, 1866; 1865–6, 126) applied, according to the last amendment, only to the county of Los Angeles. It was superseded by act of March 26, 1866, 1865–6, 440, and entirely superseded by the act of February 14, 1872, 1871–2, 99, referred to below.

An act for the better protection of farmers in certain portions of Sacramento county, approved April 25, 1862, 425. This act, which was amended April 27, 1863, 772, applied only to that portion of Sacramento county lying south of the American river on the east bank of the Sacramento river, and extending from the Sacramento river to the lower Stockton road, excluding the territory lying south of the Cosumnes river.

It was superseded by an act of March 15, 1864, referred to below.

An act to prevent the trespassing of animals upon private property in the counties of Santa Barbara, San Luis Obispo, and Monterey. Approved February 6, 1864; 1863–4, 47. This act applied only to the counties named in the title. It has been superseded by subsequent acts given below.

Solano, Marin, Sacramento, and Mono counties.—An act for the better protection of the agricultural interests in certain counties in this state, and the more effectual prevention of the trespassing of animals upon private property, approved March 15, 1864; 1863–4, 170. This act, which was supplemented April 4, 1864, 1863–4, 532, applied only to the counties of Solano, Marin, Butte, Yolo, and all of Sacramento except the portion lying south of the Cosumnes river.

It was repealed as to Butte county by act of March 20, 1866; 1865–6, 311. It was repealed by the next-named act as to the counties and parts of counties named therein. It was superseded as to Yolo by acts mentioned below.

An act to protect agriculture and to prevent the trespassing of animals upon private property, approved March 26, 1866; 1865–6, 440. This act (which was amended March 28, 1868; 1867–8, 456; March 26, 1870; 1869–70, 410; April 1, 1872; 1871–2, 940; March 16, 1874; 1873–4, 391; March 30, 1874; 1873–4, 845, and January 7, 1876; 1875–6, 5) applies only to the counties of Solano, Marin, Sacramento, and to the first supervisor district of Mono county.

Los Angeles, San Diego, and San Bernardino counties.—An act to protect agriculture and to prevent the trespassing of animals upon private property in the county of Los Angeles and in the county of San Diego and parts of Monterey county, approved February 14, 1872; 1871–2, 99. This act, which was amended March 5, 1872, 1871–2, 241, applied only to the counties of Los Angeles, San Diego, and that portion of Monterey lying north of the fifth standard line south of Monte Diablo base.

It was made applicable to San Bernardino county by act of March 23, 1872; 1871–2, 510.

It was repealed as to Monterey county by act of March 27, 1872; 1871–2, 563, given below.

It was made applicable to Inyo county by act of March 28, 1872; 1871–2, 668; but as to this county was superseded by act of March 27, 1874, which made the act of February 4, 1874, given below, applicable.

It was superseded as to a part of San Bernardino county by an act to protect agriculture, and to prevent the trespassing of animals upon private property in the county of San Bernardino, approved March 16, 1876; 1875–6, 307.

An act to protect agriculture and to prevent the trespassing of animals upon private property in the county of San Diego, approved March 24, 1876; 1875–6, 458. This act took effect from passage, and was amended in 1878: See Stats. 1877–8, 245.

San Francisco, San Mateo, Alameda, Contra Costa, Merced, and San Joaquin counties.

An Act to protect agriculture and to prevent the trespassing of animals upon private property.

[Approved March 27, 1872; 1871-2, 563.]

Animals trespassing.

SECTION 1. Any owner or occupant of any land or possessory claim finding any horse, mare, mule, jack, jennet, horned cattle, sheep, goat, or hog, or any number of such animals, upon such land or possessory claim, having done and doing any damage, whether the said claim be inclosed by a lawful fence or not, may take up and safely keep such animal, at the expense of the owner, for ten days, and shall be allowed for keeping said animals the following-named sums: For each horse, mare, jack, or jennet, at the rate of twenty cents per day; and for each head of horned cattle, the sum of twenty cents per day; and for sheep, five cents per day; and for goats or hogs, at the rate of ten cents per day; provided, that no charge to exceed five dollars per day shall be demanded on any number of sheep or goats.

Notice to owners.

SEC. 2. When the owner or owners of such animal or animals are known and reside in or near the township, they shall be forthwith personally notified; but if at a great distance from the place of taking up, a notice of such detention and the reason thereof shall be served by depositing the same, postpaid, in the nearest post-office, directed to the owner, owners, or agent at the post-office nearest to his or their residence. When the owner, owners, or agent are not known, and the marks and brands are not to be found on the records, or in the absence of any marks or brands, a complete description of the animal or animals shall be published in one or more newspapers published in the county for thirty days, stating the cause of detention; and if no newspaper be published in the county, then a notice describing the animal or animals and cause of detention shall be immediately posted conspicuously in three public places in the township, and a copy delivered to the justice of the peace of each township in said county.

Claimants.

SEC. 3. If the claimant of such aminals comes forward within ten days after the time of such notice and prove them to be their property, the person having taken them up shall deliver them to such claimant or claimants upon their paying all costs, charges, and damages sustained by reason of their trespassing.

Sale at auction.

SEC. 4. If, however, the owners do not come forward within ten days, then the person having taken up such animals shall immediately notify a constable of the township wherein the trespass has been committed, and said constable shall proceed to sell at public auction, after giving ten days' notice of such sale, by posting notices in three public places in said township, all such animals so taken up; provided, however, that the owners may prove their property and recover it by paying all costs, charges, and damages at any time before such sale takes place.

Arbitration.

SEC. 5. If the parties cannot agree as to the amount of charges and damages, then each party may choose one disinterested person, and they may choose a third person, who shall determine the amount thereof. Should the owners not come forward, then the justice of the peace shall appoint two disinterested per-

sons, and they may choose a third person, to determine the amount. The officer selling shall give a bill of sale to the purchaser, describing the animal or animals sold, the price paid therefor, and stating that it or they were sold by the authority of this act; and he shall immediately pay over all moneys arising from such sale to the justice of the peace of the township wherein such sale took place.

Proceeds of sale.

SEC. 6. Any overplus of the proceeds of such sale, after satisfying the cost and charges, shall be paid by the justice of the peace to the owner of the property, upon the production of satisfactory proof thereto, if demanded within twenty days from the day of sale; otherwise it shall, at the expiration of that time, be immediately paid to the county treasurer, to be held by him for the term of twelve months, subject to the demands of the owner on production of proof thereto, and at the expiration of that time shall be paid into the school fund for the benefit of same.

Marks and brands.

SEC. 7. It is hereby made the duty of the justice of the peace of each township to procure from the county recorder's office a full list of all marks or brands of record in said counties.

Redeeming before and after sale.

SEC. 8. Any owner or owners of any animal or animals seized under the provisions of this act may, at any time previous to the sale, demand and shall be entitled to the possession of such animal or animals, or of so many as he may claim, upon his making satisfactory proof of ownership and paying his proportion of the fees, charges, or damages; and after the sale may at any time within three months redeem said animal or animals by producing satisfactory proof of his right thereto, and paying the purchaser the amount of the purchase money, with interest at the rate of three per cent per month.

Record.

SEC. 9. The justice of the peace shall keep a book, which shall be open to public inspection, and shall make a record therein of all sales made under this act, a description of the animals sold, the price paid, the name of the purchaser, amount of fees and charges, and the amount of surplus money, if any, arising from such sale; and if such surplus money shall be received by the owner of any animal, he shall receipt for it on the margin opposite such record; and the justice of the peace shall, without fee, give this book over to his successor in office, and also any surplus money in his hands arising from any sale made by authority of this act, and the receipt of his successor shall be a legal discharge of the retiring justice of the peace for all such sums paid.

Fees.

SEC. 10. The fees of the justice of the peace for services under this act shall be fifty cents for each receipt taken, and twenty-five cents for each description entered in his book; provided, that sheep, goats, and hogs shall be described in lots according to marks. For other services, the same as are allowed under the general fee-bill for similar services in other civil actions in their respective counties; and the fees of the constable for services under this act shall be the same as are allowed by the general fee-bill.

Privilege.

SEC. 11. Nothing in this act shall be so construed as to prohibit persons driving stock along the public highways from watering said stock at the natural watering-places.

Misdemeanor.

SEC. 12. Any person who shall drive stock from land other than his own, or to any lands or possessory claims, for the purpose of taking advantage of any provisions of this act, shall be guilty of a misdemeanor, and shall upon conviction thereof be fined not less than twenty-five dollars nor more than three hundred dollars, or be imprisoned in the county jail not less than ten days nor more than sixty days.

Alternate remedy.

SEC. 13. The owner or occupant of lands, whether inclosed or not, upon which damage has been done by any of the animals referred to in section one hereof, may, instead of pursuing the remedy given in this act, have an action for damages in any court of competent jurisdiction against the owner of such animal.

Action.

SEC. 14. If the owner or occupant of land intends to institute proceedings under the preceding section, he must: first, within ten days after the damage was done, cause the same to be viewed and estimated in writing by two residents of the county competent to be a witness on the trial of such actions; second, commence his action within two months after the damage was done.

Removal.

SEC. 15. Any animal or animals sold under the provisions of this act shall not be removed from the county until after the expiration of the time given for redemption in section eight.

Adoption of this act may be submitted to a vote.

SEC. 16. Any of the counties of this state not included in this act, except such as are hereinafter named, are hereby authorized to submit the question to the people in the following way: Whenever a petition, signed by one hundred qualified electors of the county, shall be presented to the board of supervisors, said board shall cause to be entered in the journal of their proceedings a copy of said petition, and shall submit to the qualified electors of said county, at the next general election thereafter, the proposition whether or not this act shall apply to that county; and the notice of said election and the object thereof shall be published in all of the newspapers published in the county, if any there be; and if no newspaper be published in said county, then by posting notice thereof in three of the most public places in each of the townships of the county for one month next prior thereto; provided, that nothing in this act shall be so construed as to be applicable to the counties of Amador, Butte, Mendocino, Trinity, Siskiyou, Mariposa, Calaveras, El Dorado, Fresno, Kern, Tulare, Tehama, Shasta, Humboldt, Klamath, Del Norte, Sacramento, Los Angeles, San Luis Obispo and Santa Clara, and San Diego, Nevada, Colusa, Sonoma, Solano, Yolo, Santa Cruz, Monterey, Placer, and Alpine; and provided further, that no election as prescribed in this section shall be held prior to the general election in the year eighteen hundred and seventy-three, in the county of Sutter.

Ballots.

SEC. 17. The voting at sucn election shall be by ballot, and those voting in favor of the county coming under the provisions of this act shall have written or printed on their ballots the words, "Trespass Law—Yes;" those voting in opposition shall have written or printed on their ballots the words, "Trespass Law—No."

Result.

SEC. 18. The said ballots shall be returned, counted, and canvassed in the same manner as the ballots at the general election for state and county officers are returned, counted, and canvassed; and if a majority of all the votes cast on said proposition should be "Trespass Law—Yes," then this act shall immediately take effect in the county so voting.

Exemption.

SEC. 19. This act shall apply to the following counties: San Francisco, San Mateo, Alameda, Yolo, Contra Costa, Marin, Napa, Merced, San Joaquin, Solano.

Repealed.

SEC. 20. An act entitled "An act to protect agriculture and to prevent the trespassing of animals upon private property in the county of Los Angeles, and in the county of San Diego, and part of Monterey county," approved February fourteenth, eighteen hundred and seventy-two, so far as the provisions of the same apply to the county of Monterey or any part thereof, is hereby repealed.

This act was modified as to San Mateo county by act of March 9, 1876; 1875-6, 173; see *post*.

Colusa county.—An act to protect agriculture and to prevent the trespassing of animals in the county of Colusa, approved March 28, 1872; 1871-2, 685. This act was amended by act of March 28, 1874; 1873-4, 760.

Fresno, Tulare, Kern, Ventura, Santa Barbara, San Luis Obispo, Monterey, Napa, San Benito, and Inyo counties.

An Act to protect agriculture and to prevent the trespassing of animals upon private property in the counties of Fresno, Tulare, Kern, Ventura, Santa Barbara, San Luis Obispo, and Monterey.

[Approved February 4, 1874; 1873-4, 50.]

Animals to be restrained.

SECTION 1. Any owner, or any occupant of any land or possessory claim, finding any horse, mare, colt, mule, jack, jenny, horned cattle, hogs, sheep, or goats, or any number of such animals, upon such land or possessory claim, whether such land or claim be inclosed or not, may take up and safely keep such animal or animals at the expense of the owner or owners, and shall be allowed for keeping said animal or animals the following-named sums: For each horse, mare, colt, mule, jack, or jenny, the sum of twenty cents per day; for each head of horned cattle, the sum of twenty cents per day; and for each head of swine, sheep, or goats, the sum of five cents per day.

Notice given—Tender—Delivery.

SEC. 2. Any person taking up animals under the provisions of this act shall, immediately upon the taking up of such animals, notify the owner or owners of such animals, or his, her, or their agent or agents, if known to him, and living within six miles of the place where such animals were taken up, of the time and place of such taking up, together with the number, character, and description thereof; also, as nearly as he can, the marks and brands, if any, of each animal; and such owner or owners, his, her, or their agent or agents, may, at any time after the receipt of such notice, and upon proof of ownership, tender the amount of damages claimed, and demand the delivery into his, her, or their possession, of such animals; and if suit shall have been commenced, such tender may be to the justice or judge before whom such suit is brought, or the owner or owners may give bonds with sureties, to be approved by the justice or judge trying the case, for the payment of all damages and costs of suit. and may demand the

release and delivery into his or their possession, of all animals held under the action, and the judge or justice shall order the immediate delivery of such animals; but if no owner, owners, or agents of owners appear within two days to claim said animals, or if he or they appear and fail to pay satisfactory damages, or if the owner is unknown to him or her, or lives more than six miles from the place of taking up, then if the compensation and damages claimed be less than three hundred dollars ($300), the taker-up of such animals shall, within two days, file a written complaint, verified by his or her oath, with the nearest acting justice of the peace, in the township where such animals were taken up; or if the amount of compensation and damages claimed be more than three hundred dollars, then in the district court of said county setting forth in said complaint the facts, nature, location, and amount of the damages claimed, and a description of all animals so taken up, the number, the marks and brands, if any, and the supposed value of each animal, or the supposed aggregate value of such animals, and the time and place of taking up. The action shall be in favor of the owner or owners, or occupants of said lands or possessory claims, and against the property in rem; and any action thus commenced, may include all the animals thus found trespassing at any one time, whether of one or more marks or brands; and no judgment shall be entered under the provisions of this act for damages done, except upon the testimony of at least two credible witnesses, whose names shall be entered in the justice's docket, or in the minutes of the court in which the action is had.

Summons—Service—Recorder's duties.

SEC. 3. Upon the filing of the complaint a summons shall be issued, and if said action be in a justice's court, shall be made returnable not less than fifteen nor more than twenty days from the date of issuance, and directed to all owners and claimants of the property described, and shall contain a description of each animal, with its marks and brands, if any. The summons shall be served by posting a copy of the same at the door of the room where said justice or district court is held, for ten days before the return day thereof, and also at the same time by filing a copy of such summons with the recorder of said county; but the recorder shall not file the copy of summons until the payment of a fee of one dollar; and it shall be the duty of said recorder, on payment of his fee of one dollar, to forthwith compare the marks and brands, if any, described in said summons, with the record of marks and brands in his office, and thereupon to notify the owner or owners of such marks and brands of the fact of the pendency of such action, and of the time and court when and where the same is set for hearing. The certificate of the officer stating the facts of such posting and filing, or the affidavit of any person competent to be a witness, who shall have so posted and filed, shall be conclusive evidence of a sufficient service thereof; provided, that in any case when any animal or animals, seized under this act, are alleged in said complaint to be worth fifty dollars or more, it shall be the duty of the county recorder to cause publication to be made of the fact and time of seizure, and marks and brands, with a description of the animal or animals, in a newspaper of the county, at least ten days before the sale, the newspaper in which all such notices are to be made to be designated, and the rates of publication to be fixed, by the board of supervisors of the county.

Sale.

SEC. 4. If the judgment be in favor of the plaintiff, the property may be levied upon and sold as other personal property seized on execution. The officer sell-

ing shall give a bill of sale to the purchaser, describing the animal or animals sold, and to whom, and the price paid for each, and referring to the judgment under which such sale was made. Any overplus of the proceeds of such sale, after satisfying the judgment and costs, shall be paid by the justice or clerk to the owner of the property, upon demand, if demanded within six months from the date of sale; and if not so demanded, the same shall, at the expiration of said time, be paid into the county treasury, for the benefit of the county school fund; and the owner may also redeem any animal or animals sold under the provisions of this act at any time within sixty days after the sale, by producing satisfactory proof of ownership, and paying the purchaser the amount of purchase money in gold coin, with interest at the rate of two per cent per month; but if no redemption be made within sixty days, such bill of sale shall be conclusive evidence of title in favor of purchaser of the animal or animals therein described.

Fees.

SEC. 5. The fees of all officers for services required under this act shall be the same as now allowed by law for similar services in other civil actions, and shall be taxed as costs in the judgment.

Records of sales, etc.

SEC. 6. The justice and clerk shall keep a book, which shall be open to public inspection, and shall record therein all sales made pursuant to any judgment rendered in their respective courts under the provisions of this act, which record shall contain a description of the animals sold, the prices paid, the name of the purchaser, the amount of fees and charges, and the amount of surplus money, if any, arising from each sale, and whether any animal or animals have been redeemed; and if such surplus money shall be received by the owner of any animal, he shall receipt for it in the margin opposite such record, and the justice or clerk shall, without fee, deliver such book to his successor in office, and also all surplus money in his hands arising from any sale made by authority of this act, taking his receipt therefor.

Felony and misdemeanor.

SEC. 7. Any person who shall drive stock from any lands or possessory claim other than his own, to any other lands or possessory claim, or shall take up any such animal or animals on any land or possessory claim other than his own, for the purpose of taking advantage of any of the provisions of this act, shall be deemed guilty of a felony; and any person who shall fail or neglect to give the notice required by the second section of this act, or shall rescue or take from the possession of the taker-up any animal or animals, without first having paid the compensation, fees, and damage claimed or awarded, and any officer violating any of the provisions of this act, shall be deemed guilty of a misdemeanor.

Action.

SEC. 8. The owner or occupant of any land or possessory claim, whether inclosed or not, independent of the foregoing provisions of this act, and if he fail to avail himself thereof, may maintain an action; provided, such action be commenced within sixty (60) days in any court of competent jurisdiction against the owner of, or person having the control of, any of the animals named in section one, for any damage such animals may commit upon his said land or claim; and if judgment be rendered in his favor, it shall be entered for the amount of the actual damage proved.

Construction.

SEC. 9. Nothing in this act shall be so construed as to prevent the free use for grazing purposes of all unoccupied lands not taxed; provided, that each actual settler, who shall have a prima facie title to the land upon which he is settled, shall be protected in the possession of one hundred and sixty acres, and residence on the land shall be considered prima facie title; and provided further, that said one hundred and sixty acres shall be marked and defined by visible and well-defined monuments.

SEC. 10. All acts and parts of acts in conflict with this act are hereby repealed, so far as the same apply to the territory embraced in the provisions of this act; provided, that this repeal does not include or affect any act or acts requiring railroads to be fenced, and all such acts shall remain in force.

Where to take effect.

SEC. 11. This act shall take effect and be in force in the counties of Santa Barbara, Ventura, Fresno, and in all that portion of Tulare county embraced within the following boundaries, to wit: On the north by Fresno county line, on the east by the San Joaquin valley railroad, on the south by Cross creek, and the west by Tulare lake, and upon all cultivated lands, fenced or unfenced, in said Tulare county; all lands plowed and sown within twelve months last past shall be deemed cultivated lands; and in all that portion of Kern county embraced within the following boundary lines, to wit: Commencing at the north-east corner of section nine, township twenty-nine south, range twenty-eight east, of Mount Diablo base and meridian, and running thence west six miles to the north-west corner of section ten, township twenty-nine south, range twenty-seven east; thence south about four and three quarter miles to the south bank of Kern river; thence down said Kern river three miles to the common corner of townships twenty-nine and thirty south, ranges twenty-six and twenty-seven east; thence in a north-westerly direction along the channel of New river about six miles to the intersection of said channel with the range line between ranges twenty-five and twenty-six east; thence south one-half mile to the common corner of townships twenty-nine and thirty south, ranges twenty-five and twenty-six east; thence west seven miles to the north-west corner of section one, township thirty south, range twenty-four east; thence south on section line to the intersection of said line with Buena Vista slough; thence along the east bank of said slough a distance of about five miles to its intersection of section line between sections eight and seventeen, in township thirty-one south, range twenty-five east; thence in a south-easterly direction, following the meander lines of the swamp-land bordering upon the north of Buena Vista and Kern lakes, and the slough connecting said lakes, to the south-east corner of section twelve, township thirty-two south, range twenty-seven east; thence east three miles, to the south-east corner of section nine, township thirty-two south, range twenty-eight east; thence north nineteen miles, to the place of beginning; from and after the twentieth day of February, A. D. eighteen hundred and seventy-four, and shall take effect and be in force in all those portions of Tulare and Kern counties (not above described), and in the counties of San Luis Obispo and Monterey, on the twenty-fifth day of June, A. D. eighteen hundred and seventy-four.

The foregoing act was supplemented so as to take effect in a portion of Fresno county by act of February 27, 1874; 1873–4, 179. See also act of February 15, 1876; 1875–6, 57.

It was extended and made applicable to San Benito county by act of March 18, 1874; 1873–4, 474.

It was extended and made applicable to Napa

county by act of March 27, 1874; 1873–4, 705.

It was made applicable to Inyo county by act of March 30, 1874; 1873–4, 824.

As to Fresno, see act of March 20, 1876; 1875–6, 373; cited *post*.

Butte county.—An act to protect agriculture in the county of Butte, approved March 10, 1874; 1873–4, 310. This act applied to a portion of the county named in the title west of the California and Oregon railroad.

It was amended so as to apply to the portion of the county lying west of Feather river and the main north fork of the same, by act of March 16, 1876; 1875–6, 314.

Yolo county.—An act to protect agriculture and to prevent the trespassing of animals upon private property in the county of Yolo, approved March 11, 1874; 1873–4, 343. This act applies only to the county named, and supersedes the foregoing act of February 4, 1874.

Calaveras county.—An act to protect agriculture in the county of Calaveras, approved March 24, 1874; 1873–4, 579. This act applies to only a certain described portion of the county named.

An act supplemental to the act above named, approved April 3, 1876; 1875–6, 901. This act provides for an election to vote on question of continuing trespass law.

Tehama county.—An act to protect agriculture and to prevent the trespassing of animals in Tehama county, approved March 30, 1874; 1873–4, 853. This act was directed to be submitted to vote, as to whether it should be continued in force or not, by act of January 29, 1876; 1875–6, 18.

An act to amend the foregoing act of March 30, 1874, approved March 31, 1876; 1875–6, 643. This act restricted the operation of the act amended to a portion of the county.

El Dorado county.—An act to prevent the trespassing of animals upon private property in the county of El Dorado, approved March 30, 1874; 1873–4, 859. This act applies only to Mud Springs township in El Dorado county.

An act to protect agriculture in the county of El Dorado, approved March 20, 1876; 1875–6, 356. This act applies only to White Oak township and that portion of Salmon Falls township lying south of the south fork of American river in El Dorado county. It was repealed March 26, 1878; 1877–8, 557.

San Mateo county.—An act in relation to boundary fences and the trespass of animals in the county of San Mateo, approved March 9, 1876; 1875–6, 173. This act expressly refers to the act of March 27, 1872, given *ante*, but partly modifies it as to its operation in San Mateo county.

Yuba county.—An act to protect agriculture and to prevent the trespassing of animals upon private property in Marysville and Long Bar townships, Yuba county, approved March 11, 1876; 1875–6, 210. This act applies only to the portions of the county named in the title.

Stanislaus, Fresno, and Sutter counties. An act to protect agriculture and to prevent the trespassing of animals upon private property in the counties of Stanislaus, Fresno, and Sutter, approved March 20, 1876; 1875–6, 373. This act is not to repeal any other law in force in any of the counties named, but only to afford an additional remedy: See sec. 8.

Placer county.—An act to prevent the trespassing of animals in judicial townships Nos. 1 and 10, of Placer county, approved March 29, 1876; 1875–6, 542. This act took effect September 1, 1876, and applies only to the townships named in the title.

See also the following special acts:

An act to protect agriculture and to provide for the distraining of trespassing animals in the counties of Los Angeles and Stanislaus, approved March 4, 1878; 1877–8, 164.

An act concerning trespassing of animals upon private lands in certain counties in the state of California (certain portions of San Bernardino, El Dorado, and Tehama counties, and to Colusa, Humboldt, Merced, and Sacramento counties), approved March 7, 1878; 1877–8, 176.

An act amendatory of an act entitled "An act to protect agriculture and to prevent trespassing of animals upon private property in the county of San Diego, approved March 24, 1876," approved March 14, 1878; 1877–8, 245.

An act to prevent the trespassing of animals upon private property in the county of Yolo, approved March 20, 1878; 1877–8, 360.

An act to prevent the trespassing of goats on inclosed lands in Amador county, approved March 26, 1878; 1877–8, 536.

An act to repeal an act entitled "An act to protect agriculture in the county of El Dorado, approved March 20, 1876," approved March 26, 1878; 1877–8, 557.

TRINITY COUNTY.

References to special and local acts.—Boundaries and seat of justice, 1850, 62; 1851, 179; 1852, 240; 1853, 161; 1855, 200; 1871–2, 766.

Concerning records kept in, previous to organization, 1851, 313.

Providing for organization, 1851, 516.

Authorizing construction of wagon-road from Humboldt bay to Sacramento valley, 1852, 154.

Authorizing W. Morehead and others to collect tolls on bridge across Trinity river, 1852, 238.

Authorizing D. B. Mooney to collect tolls on ferry across Trinity river or substitute toll-bridge, 1852, 239.

Providing for ordering a special election, 1852, 240.

For relief of claimants of lots or blocks of land in Union and Eureka, 1853, 151.

To divide and form new county out of western portion, to be called Humboldt, 1853, 161.

Providing for restoration of certain books, records, maps, and papers to Humboldt county, 1854, 36.

Authorizing court of sessions to levy special tax, 1854, 198.

To fund that portion of the debt accruing previous to May 12, 1853, apportioned to Humboldt county, 1854, 253.

Fixing compensation of county judge, 1855, 150.

Legalizing and confirming election of certain officers, 1856, 125; 1857, 4.

Providing for maintenance of indigent sick, 1858, 66.

Fixing terms of court of sessions and county court, 1858, 94.

Authorizing board of supervisors to levy special tax and create redemption fund for payment of county indebtedness, 1859, 29.
Authorizing Weaverville and Shasta Wagon-road Company to file certain papers *nunc pro tunc*, 1859, 227.
Authorizing county to retain state's portion of poll-tax, etc., to be applied to construct and improve wagon-road from Cloverdale to Yreka, 1859, 323.
For relief of T. W. Blake and others, 1859, 334.
Authorizing Shasta and Yreka Turnpike Company to file certain papers *nunc pro tunc*, 1860, 11.
Concerning roads and highways, 1860, 117; 1863, 130; 1863–4, 39.
Providing for compensation of keepers of county jail, 1860, 219.
Relating to sureties of C. F. Lynn, 1861, 55.
Authorizing board of supervisors to levy taxes to build county jail, 1861, 60.
Making office of county treasurer a salaried office, 1862, 67.
Concerning county records, 1862, 164; 1863, 22.
Authorizing board of supervisors to levy toll on certain roads, 1863, 20, 358.
Providing for public administrator, 1863, 23.
Creating contingent fund, 1863, 36.
Separating office of collector of taxes from office of sheriff, 1863, 39.
Authorizing board of supervisors to levy tax for county building fund, 1863, 55.
Authorizing superintendent of public schools to pay claim of J. H. Hough, 1863, 242.
Regulating fees of officers, 1863, 281; 1863–4, 479.
Providing county judge with supreme court reports, 1863–4, 361.
Concerning office of public administrator (fees), 1863–4, 480.
To extend the corporate existence of the Weaverville Wagon-road Company, 1865–6, 57.
Exempted from act incorporating canal companies, 1865–6, 53, 605; 1867–8, 134.
Salary of county judge, 1865–6, 98.
Superintendent of public schools to pay claim of A. D. Bayles, 1865–6, 440.
Roads and highways, 1865–6, 381, 564; 1867–8, 315.
District assessors, 1865-6, 651.
To reduce county expenses, 1865–6, 709.
To regulate issue of county warrants, 1865–6, 831.
To levy special tax, 1865–6, 864.
Act concerning jurors, 1867–8, 39.
County treasurer released from payment of certain moneys, 1867–8, 84.
Public and private roads, 1867–8, 158; 1869–70, 231.
Roads and highways, 1867–8, 315.
For payment of state's portion of auditor's salary, 1867–8, 370.
Fees and salaries, 1867–8, 448; 1869–70, 148.
Supervisors, meeting of, 1867–8, 681.
To levy special tax, 1869–70, 69.
Concerning roads and highways, 1871–2, 239; 1875–6, 248.
To pay expenses of Indian war, 1871–2, 312.
To fix salary of supervisors, 1871–2, 380.
For construction of free bridges, 1871–2, 414; 1873–4, 62.
Additional levy of county taxes, 1871–2, 415.
Salary of district attorney, 1871–2, 654.
In third congressional district, 1871–2, 714.
Special tax for surveying purposes, 1871–2, 763.
To better define boundary, 1871–2, 766.
As to taking effect of parts of codes, 1871–2, 845.
To fix salary of county clerk, 1873–4, 184.
In twenty-eighth senatorial district, 1873–4, 369.
Concerning employment of teachers, 1873–4, 472; 1875–6, 122.
Compensation of under-sheriff, 1873–4, 593.
Supervisors to fix rates of tolls on certain wagon-roads, 1873–4, 607.
For the relief of John Jackson, ex-sheriff and ex officio tax collector, 1875–6, 64.
To prevent hogs and goats running at large in Weaverville, 1877–8, 33.
To create additional contingent fund, 1877–8, 184.
Concerning hogs running at large, 1877–8, 184.

TULARE COUNTY.

References to special and local acts.—Boundaries, 1852, 240; 1856, 183; 1863–4, 528; 1873–4, 700.
Seat of justice, 1852, 240; 1853, 67.
Providing for organization, 1852, 240.
Uniting offices of clerk and recorder, 1853, 37.
Submitting to voters permanent location of seat of justice, 1853, 67.
Providing for construction of canal from Tulare lake to waters of San Joaquin, 1853, 167; 1855, 162.
Abolishing board of supervisors, 1854, 32.
Fixing compensation of county judge, 1854, 36; 1856, 95; 1860, 168.
To organize Buena Vista county, 1855, 203; 1856, 96; 1858, 36.
Fixing salary of district attorney, 1856, 95; 1858, 192; 1860, 272.
Fixing traveling fees, 1856, 97.
Creating Fresno county, 1856, 183.
Providing for construction of canals and for draining and reclaiming certain swamp and overflowed lands in Tulare valley, 1857, 192; 1858, 190; 1862, 190; 1863, 494.
Legalizing certain records, 1858, 16.
Providing for erection of jail, 1858, 106.
Fixing amount of official bonds of county officers, 1858, 119.
Regulating fees of sheriff, 1858, 121.
To audit and allow claim of E. F. Beale for expenses incurred in settlement of Indian difficulties, 1858, 326.
To provide for funding debt, for payment of interest and for gradual liquidation of debt, 1859, 54.
Extending time for collection of taxes, 1860, 14; 1861, 1.
Concerning board of supervisors, 1861, 43.
Authorizing county auditor to issue certain bonds, and providing for construction of certain road, 1861, 164.
Ratifying and approving certain orders of board of supervisors, granting land to certain parties, and to make certain conveyances, 1861, 233.

Making warrants drawn on general fund receivable for county taxes, 1861, 296; 1862, 328; 1863, 302, 760.

Submitting to qualified electors question of permitting hogs to run at large, etc., 1861, 411; 1862, 241.

Authorizing guardian of George and Marshall Horton to sell certain of their real estate, 1861, 481.

Providing for construction of wagon-road from Tulare valley to Owen Lake valley, 1862, 65.

Authorizing officers of Visalia Lodge No. 128, of Free and Accepted Masons, to sell and convey certain property, 1862, 86.

Concerning sale of certain school lands, 1862, 87.

Fixing compensation of county auditor, 1862, 311; 1863, 301.

Authorizing board of supervisors to annul certain bonds, 1863, 28.

Providing for public administrator, 1863, 402.

Granting right to construct wooden or iron railroad from Slate Range mountains to Kern river, 1863, 696.

Authorizing county auditor to issue bonds to aid construction of wagon-road, 1863, 713.

Granting right to construct wagon-road, 1863, 714; 1863-4, 263.

Authorizing county assessor to complete assessments and file supplemental tax-list, 1863-4, 70.

Authorizing board of supervisors to allow claim of Robert Glass, 1863-4, 72.

Creating board of commissioners, defining their powers and duties, etc., 1863-4, 167.

Creating contingent fund, 1863-4, 192.

Creating board of water commissioners and defining their powers and duties, 1863-4, 375.

Creating Coso county, 1863-4, 528.

Roads and highways, 1865-6, 18.

For the relief of T. C. Hays, 1865-6, 39.

Franchise for wagon-road to Peter Goodhue and others, 1865-6, 106.

Funding debt, 1865-6, 221.

Notaries public, 1865-6, 234.

County clerk, auditor and recorder of, 1865-6, 245.

Franchise to Kearsarge Road Company, 1865-6, 287.

Water-commissioners act amended, 1865-6, 313, 314.

Protection of stock-raisers, 1865-6, 322.

Inyo county formed from portion of, 1865-6, 355.

Powers granted to McFarlane Pass Wagon-road Company, 1865-6, 435.

Franchise to H. M. White and associates for wagon-road, 1865-6, 503.

To improve navigation of San Joaquin river, 1865-6, 536.

Wagon-road franchise to Clear lake mines, 1865-6, 690.

To legalize acts of recorders, 1865-6, 825.

Authorized to aid in construction of Southern Pacific railroad, 1865-6, 816.

To construct turnpike road, 1865-6, 825.

Wagon-road franchise to Agua Caliente, 1865-6, 825.

Water ditches and privileges for agriculture and mining, 1867-8, 112.

Act concerning jurors, 1867-8, 39.

Compensation of supervisors, 1867-8, 128.

Roads and highways, 1867-8, 154; 1869-70, 324.

Auditor to issue bonds for building bridges, 1867-8, 208.

For payment of debt of Kern county, 1867-8, 210.

Compensation of jurors in criminal cases, 1867-8, 267.

Redistrict of county, 1867-8, 299.

To be in the thirteenth judicial district, 1867-8, 658.

Funding debt of road fund, 1867-8, 351.

For payment of state's portion of auditor's salary, 1867-8, 371.

Fees and salaries, 1867-8, 448; 1869-70, 148.

To extend time to complete wagon-road, 1867-8, 710.

Act in relation to herding sheep, 1869-70, 304.

For the relief of L. P. Hall and S. J. Garrison, 1869-70, 624.

Time of levying road tax, 1869-70, 324.

Terms of district court, 1869-70, 792.

As to canals and drainage, 1871-2, 550.

Salary of district attorney, 1871-2, 654.

In fourth congressional district, 1871-2, 714.

To fix terms of county court, 1873-4, 29.

Regulating traveling fees of sheriff, 1873-4, 45.

To protect agriculture, 1873-4, 50.

To separate office of recorder from that of county clerk, 1873-4, 60.

To incorporate city of Visalia, 1873-4, 171; 1875-6, 119.

For construction of public roads, 1873-4, 283; 1875-6, 11, 531.

To protect groves of big trees, 1873-4, 347.

To fix salary of county judge, 1873-4, 349.

In fourth senatorial district, 1873-4, 366.

To establish county line between Tulare and Fresno counties, 1873-4, 700.

Fixing bonds of tax collector, 1875-6, 16.

Providing for building of court-house, offices, and jails, 1875-6, 26, 147.

Directing treasurer to pay certain orders drawn by him on road commissioner, 1875-6, 72.

Changing name of Tule river school district to that of Porterville school district, 1875-6, 123.

To abate squirrel nuisance, 1875-6, 143.

Separating offices of auditor and recorder and regulating salaries, 1875-6, 151, 363.

Fixing salary and bond of assessor, 1875-6, 172.

To legalize certain proceedings of supervisors, 1875-6, 303.

To establish county line between Tulare and Fresno counties, 1875-6, 397.

Concerning water ditches for irrigating, mining, and manufacturing purposes, 1875-6, 547.

To create West Side irrigation district, 1875-6, 731, 885.

Extending time for publishing delinquent tax list, 1877-8, 64.

As to offices of county clerk and recorder, 1877-8, 104.

For relief of Charles Dukes and others, 1877-8, 193.

Funding indebtedness, 1877-8, 198.

To quiet title to town lots in Visalia city, 1877-8, 363.

To establish a board of health, 1877-8, 558.

To regulate traveling fees of sheriff, 559.

To provide a new great register, 1877-8, 693.

To attach a portion of Kings river school district to Kingsbury school district, 1877-8, 1010.

TUOLUMNE COUNTY.

References to special and local acts.—Boundaries, 1850, 63, 263; 1851, 175; 1855, 245; 1859, 213.

Seat of justice, 1850, 63, 263; 1851, 175.

To fund debt and provide for payment, 1853, 26.

Creating Stanislaus county, 1854, 21, 148.

Authorizing court of sessions to levy and collect special tax for support and maintenance of indigent sick, 1854, 83; 1857, 198.

Fixing compensation of board of supervisors, 1854, 207; 1855, 56.

Authorizing John Caruthers to build and construct turnpike or gravel road from Stockton to Sonora and Columbia, 1854, 220.

Fixing time of holding courts authorized to be held by county judge, 1855, 114; 1858, 111.

To compensate Mrs. S. Staples, teacher of pioneer school, 1855, 209.

To establish prominent boundary line between Tuolumne and Stanislaus counties, 1855, 245.

In relation to sureties of H. K. Swope, late sheriff, 1856, 35.

Providing for erection of jail, 1856, 120; 1857, 104; 1858, 2.

Granting to sheriff additional time to make annual settlement for collection of taxes for 1856, 1857, 31.

Incorporating town of Columbia, 1857, 188; 1858, 85; 1863, 272; 1869–70, 430.

Relating to hospital affairs, 1857, 198.

Concerning office of public administrator, 1858, 114, 297.

Concerning roads and highways, 1858, 297; 1859, 30, 368; 1863, 163.

Regulating fees of certain officers, 1859, 8; 1863–4, 182.

Fixing terms of probate court, 1859, 15.

Fixing compensation of county judge, 1859, 52; 1860, 55.

Fixing salary of district attorney, 1859, 59.

Concerning board of supervisors, 1859, 88.

Fixing time of holding court of sessions and county court, 1859, 150, 256.

Abolishing office of public administrator, 1859, 336.

Creating contingent fund, 1860, 56.

Authorizing sale of real estate of Joel Allen, deceased, 1860, 80.

Authorizing administrator of Albert Cutler, deceased, to sell real estate, 1861, 15; 1862, 8.

Making certain offices salaried offices, 1861, 20, 188; 1862, 18, 478; 1863–4, 316.

Providing fund for redemption of outstanding county warrants, etc., and providing for payment of all current expenses, etc., 1861, 24, 90; 1863, 14.

Regulating fees of associate judges of court of sessions, jurors, judges, inspectors, and clerks of elections, 1861, 116.

Authorizing board of supervisors to transfer certain funds, 1861, 302.

Relative to office of superintendent of common schools, 1862, 42.

Authorizing guardian of infant heirs of Michael Flanigan, deceased, to sell property, 1862, 75.

Relative to certain outstanding warrants, 1862, 96.

Granting to J. H. and C. J. Deering to construct and maintain bridge or bridges across Tuolumne river, 1862, 112; 1863, 356.

To district county into supervisor districts, 1862, 167.

Legalizing declaration of roads and public highways made by board of supervisors, 1862, 213.

Providing for collection of delinquent trxes, 1862, 253.

Authorizing auditor to issue certain bonds and providing for construction of certain road, 1862, 439.

Granting right to construct turnpike between Columbia and Sonora, 1862, 524.

Providing manner of drawing, summoning, and forming grand juries, 1863, 29.

Providing for construction of wagon-road from Sonoma to Aurora, 1863, 134, 761; 1863–4, 157.

Granting right to construct bridge across Stanislaus river at Peoria bar, 1863, 181.

Granting right to construct turnpike between Chinese Camp and Aurora, 1863, 564.

Authorizing board of supervisors to take and subscribe fifty thousand dollars to stock of Stockton and Copperopolis Railroad Company, etc., 1863, 679.

Granting to B. W. Hathaway and others right to construct and maintain turnpike or toll-road from Sonora to state line in Mono county, 1863–4, 155.

For relief of Miss M. H. Bowne, 1863–4, 223.

To enable Sonora and Mono wagon-road commissioners to settle with county, 1863–4, 364.

Concerning fences, 1863–4, 475.

Leave of absence granted to county clerk, 1865–6, 11.

Erection of county jail, 1865–6, 52, 135.

Salary of county judge, 1865–6, 65.

Wagon-road franchise to H. B. McNeil and others, 1865–6, 99; 1867–8, 98.

Roads and highways, 1865–6, 116, 664; 1867–8, 77; 1869–70, 396, 654.

Certain offices made salaried, 1865–6, 151.

To fix salary of certain offices, 1865–6, 273.

Goats running at large, 1865–6, 457.

For the relief of C. Burden, 1865–6, 680.

Terms of district court, 1867–8, 4, 618.

To be part of fifth judicial district, 1865–6, 863; 1867–8, 658.

Terms of probate court, 1867–8, 7, 688.

Franchise to improve river, 1867–8, 262.

In relation to sureties on bond of T. Norwood, 1867–8, 295.

Act incorporating canal companies not to apply, 1867–8, 134.

To redeem outstanding warrants, 1867–8, 354.

Assessor and collector, duties of, 1867–8, 407.

Fees and salaries, 1867–8, 448; 1869–70, 148.

Taxes on migratory bands of stock, 1867–8, 709.

Assessment of property, 1869–70, 20.

Salary of county judge, 1869–70, 67.

Tax for road purposes, 1869–70, 77.

Treasurer to be credited with poll-tax receipts, 1869–70, 76.

For the relief of district collectors, 1869–70, 110.

For redeeming and paying outstanding warrants, 1869–70, 281; 1871–2, 284.

In relation to indebtedness, 1869–70, 292.

To legalize certain county warrants, 1869–70, 382.

Treasurer to apportion moneys in current expense fund, 1869–70, 504.
Sheriff to be ex officio tax collector, 1869–70, 525.
For the relief of C. Dorsey, district attorney, 1869–70, 878.
Concerning roads and highways, 1871–2, 185.
Special tax to pay certain bonds, 1871–2, 320.
To abolish office of public administrator, 1871–2, 381.
Salary of district attorney, 1871–2, 653.
In second congressional district, 1871–2, 714.
For payment of certain road indebtedness, 1871–2, 900.
Right of way to Yosemite Turnpike Road Company, 1873–4, 106.
Leave of absence to C. Burden, coroner, 1873–4, 129.
As to commencement of term of supervisors, 1873–4, 154.
In seventeenth senatorial district, 1873–4, 368.
Regulating township offices, 1873–4, 453.
For payment of certain road indebtedness, 1873–4, 617.
Fixing bond of treasurer, 1875–6, 17.
Regulating salaries of certain officers, 1875–6, 45.
To provide for care and maintenance of indigent sick, 1877–8, 596.
City of Sonora.—Incorporating city of Sonora, 1851, 375; 1854, 208; 1855, 37.
Second act incorporating city, 1855, 35; 1857, 13; 1858, 99; 1860, 17.
In regard to justices of the peace, 1858, 90.
Authorizing board of trustees to levy special tax for benefit of fire department, 1860, 206.
To define and establish boundary line of city, 1861, 159.
Legalizing ordinances and all official acts of board of trustees, 1861, 271.
Reincorporating city, 1862, 228; 1863, 38; 1869–70, 394, 406; 1875–6, 524.
Directing board of trustees to levy special tax for benefit of fire department, 1863–4, 312.
Mono road, near Antelope valley, 1865–6, 58.
Wagon-road to Copperopolis, 1865–6, 99; 1867–8, 98, 426.
To establish boundary of city of Sonora, 1871–2, 10.
To establish fire-department fund, 1871–2, 85.
Reincorporating city of Sonora, 1877–8, 23, 467.

UNIVERSITY OF CALIFORNIA.

The Political Code, secs. 1385 et seq., provides for the management of the University of California, and to a great extent, if not entirely, supersedes all the previous statutes in relation to it. But it is deemed important to refer in this place to the previous legislation, and give such statutes (not given in the codes) as have been passed since the codes. The old statutes were as follows:

An act to create and organize the University of California, approved March 23, 1868; 1867–8, 248; amended March 28, 1872; 1871–2, 655.

An act requiring the controller to transfer certain funds to university fund, approved March 26, 1868; 1867–8, 357.

An act to authorize the regents of the University of California to establish a preparatory department, approved January 6, 1870; 1869–70, 4.

An act to provide military instruction in the University of California, and to authorize the governor to call into service the retired officers of university cadets in cases of war or insurrection, approved March 4, 1870; 1869–70, 119.

An act to define the time when certain reports (including that of regents) shall be made, approved March 18, 1870; 1869–70, 333.

An Act to provide for five competitive scholarships for the benefit of meritorious young men desirous of entering the state university.

[Approved April 1, 1870; 1869–70, 546.]

Competitive scholarship.

SECTION 1. The regents of the University of California are authorized to establish four competitive scholarships, each embracing the full term of four years in the university. One only of said scholarships shall be issued at the beginning of each university year, except to fill vacancies; provided, that the present and all future scholarships shall be subject to examination at the close of each university year, and if the student having the benefit of any scholarship shall not be found by his acquirements, industry, and conduct to deserve the continuance of the same, it shall be the duty of the president of the university to report the same to the regents, who shall declare the scholarship vacant, and the same shall thereafter be filled in the same manner as other scholarships are filled. The present scholarships shall be subject to this act, and the appointments herein provided for shall be made when vacancies occur; provided, that the number shall be reduced to four, as above provided. [*Amendment, approved March* 7, 1872; 1871–2, 275; *took effect from passage.*]

Qualifications of applicants.

SEC. 2. The competitive examination for scholarships shall be made by the faculty. The applicants for such examination shall be bona fide residents of

California, and shall have been chiefly educated in any of the schools of this state, and shall, at the time of application, satisfy the regents in respect to character and to the inability of the applicant to provide his own maintenance at the university.

Appropriation.

SEC. 3. Each scholarship shall be entitled to three hundred dollars per annum, to be appropriated out of the funds belonging to the university, and shall be applied, under the direction of the proper officer of the faculty, to the education and support of the scholar during his university course; provided, the regents may, upon the recommendation of the faculty, revoke any scholarship for improper conduct or violating of established rules, and shall have power to fill all vacancies which may occur in scholarships under competitive examination. [*Amendment, approved March* 7, 1872; 1871–2, 275; *took effect from passage.*]

An act for the endowment of the University of California, approved April 2, 1870; 1869–70, 668. This act appropriated so much of the moneys to be received from the sale of saltmarsh and tide lands in the bay of San Francisco as would yield an annual income of fifty thousand dollars. The moneys were to be converted into bonds and paid into a fund in the state treasury, to be known as the university fund. See act of December 22, 1873; 1873–4, 6.

An act to enable the regents of the University of California to renew and secure certain loans, and to mortgage and sell certain real estate, approved February 1, 1872; 1871–2, 48. This act provided for renewing the loan and mortgage on the Brayton block in Oakland, and for the sale of that block after the university should be removed from Oakland to Berkeley.

An Act to provide for the support of the University of California.

[Approved March 26, 1872; 1871–2, 554.]

Appropriation of not to exceed six thousand dollars per month, for two years.

SECTION 1. It shall be the duty of the secretary of the board of regents of the University of California, on the last day of each month, for the period of two years hereafter, to transmit to the controller of state a sworn statement of the receipts of the university from all sources of income, during the month ending on that day, and of the necessary expenses of the university during the same time; and if the expenses shall exceed the income, it shall be the duty of the controller to draw his warrant upon the treasurer of state in favor of said regents for the deficiency; provided, that such warrant shall not be for a sum that, with the amount of income received from other sources for the month, will together amount to more than six thousand dollars per month. The sums necessary to pay said warrants are hereby appropriated from any money in the treasury not otherwise appropriated, and the treasurer is directed to pay the same.

SEC. 2. This act shall take effect immediately.

There was also three hundred thousand dollars appropriated to the university for building purposes the same year, by act of April 1, 1872; 1871–2, 743.

An act to consolidate certain funds and to create therefrom a permanent endowment for the University of California, of which the interest only shall be used by the board of regents to meet current expenses, approved March 19, 1878; 1877–8, 337. This act is given in full, Pol. Code, sec. 1415.

An act to create a commission to examine and report the condition of certain funds, approved April 1, 1878; 1877–8, 928. This act appointed the controller, surveyor-general, attorney-general, and treasurer of state a commission to examine into and report concerning the funds of the university.

An act to appropriate twenty-five thousand dollars, to be used conjointly with a like sum of twenty-five thousand dollars donated by H. D. Bacon for the construction of a building to be erected on the university grounds in Alameda county for a library and art gallery, approved April 1, 1878; 1877–8, 930. This act authorized the appropriation referred to in the title.

An act to appropriate money to reimburse the University of California for moneys heretofore appropriated to the endowment fund thereof, which moneys have by mistake been withheld therefrom, and appropriated to other state purposes, approved March 4, 1881; 1881. 50.

An Act to amend an act entitled "An act to create Hastings College of the Law in the University of the State of California," approved March 26, 1878.

[Approved March 3, 1883; 1883, 26.]

The act entitled "An act to create Hastings College of the Law in the University of the State of California," is hereby amended so as to read as follows:

University regents to control.

SECTION 1. That S. C. Hastings be authorized to found and establish a law college, to be forever known and designated as "Hastings College of the Law." That the officers of said college shall be a dean and registrar. The regents of the university shall have the same control of the college as they possess over the academic department of the University of California, except as hereinafter provided.

Diplomas.

SEC. 2. The board of regents, on recommendation of the dean and faculty of the college, shall grant diplomas to the students of the college, and the president shall sign and issue the diplomas.

Halls.

SEC. 3. There shall be set apart for the use of the students of the college some room or suitable hall in the buildings of the university at Berkeley, and the board of supervisors of the city of San Francisco shall supply a suitable hall in the city of San Francisco for the use of the college.

Dean.

SEC. 4. The dean of said college shall be ex officio of the faculty of the university, and entitled to attend meetings of the board of regents at all times when he shall have business of the college to lay before them, and to be heard on all questions affecting the college.

Business of college.

SEC. 5. The business of the college shall be to afford facilities for the acquisition of legal learning in all branches of the law, and to this end it shall establish a curriculum of studies, and shall matriculate students who may reside at the university of the state, as well as students residing in other parts of the state; provided, there shall always be in said college a course of lectures upon the duties of municipal officers in the city and county of San Francisco.

Conditions concerning deanship.

SEC. 6. Professorships may be established in the name of any founder of such professorships who shall pay to the regents of the university the sum of thirty thousand ($30,000) dollars. The son of the founder, Robert P. Hastings, shall be dean of the college during his life-time, and after his death or resignation the dean shall be elected by the members of the highest appellate court of the state of California, which said court shall appoint one of the male heirs of the founder, if deemed capable and competent. The registrar, after the death or resignation of the present incumbent, shall be elected by the board of regents.

Conditions of repayment to Hastings.

SEC. 7. The object of this act being to grant a perpetual annuity for the support and maintenance of said college, should the state or any government which shall succeed it fail to pay to the regents of the university the sum of seven per cent per annum, as above stipulated, or should the college cease to exist, then the state or its successor shall pay to the said S. C. Hastings, his

heirs or legal representatives, the said sum of one hundred thousand ($100,000) dollars, and all unexpended accumulated interest; provided that such failure be not caused by mistake, or accident, or omission of the legislature to make the appropriation at any one session.

Annuity to be expended for instruction only.

SEC. 8. No part of the annuity herein provided for shall be expended by the regents of the university for any other purpose than instruction; provided, however, that an amount, not to exceed six hundred dollars per annum, may be used from such annuity to pay for the services of the registrar.

Faculty.

SEC. 9. The dean, acting professors, lecturers, readers, and other instructors shall constitute the faculty and examining board of the college.

SEC. 10. This act shall take effect and be in force from and after sixty days after its passage.

An Act to amend sections one, four, and eight of an act approved March 8, 1883, *entitled "An act to amend an act entitled 'An act to create Hastings College of the the Law in the University of the State of California,'" approved March* 26, 1878.

[Approved March 18, 1885; 1885, 203.]

Hastings College of the Law—Trustees.

SECTION 1. Section one of the act of which this is amendatory, entitled "An act to amend an act entitled 'An act to create Hastings College of the Law in the University of the State of California,'" approved March twenty-sixth, eighteen hundred and seventy-eight, is amended to read as follows:

Section 1. That S. C. Hastings be authorized to found and establish a law college, to be forever known and designated as Hastings College of the Law; that the officers of said college shall be a dean, registrar, and three trustees; that the trustees shall be Thomas P. Stoney, Louis T. Haggin, and R. Porter Ashe; and when vacancies shall occur among the trustees, such vacancies shall be filled by appointment of the chief justice of the supreme court of California, by and with the consent of the remaining trustees, or trustee, if any such there be. The regents of the University of California shall have the same control of the college as they possess over the academic department of the university, except as herein provided.

Drawing funds.

SEC. 2. Section four of said act is amended to read as follows:

Section 4. The chief justice of the supreme court of California shall be ex officio president of the trustees, and, with the concurrence of the trustees, shall draw the funds of the college from the state treasury; and the treasurer of the state of California is hereby authorized to pay any and all moneys appropriated to said college upon the order of the chief justice of the state of California, as above provided. If from any cause there shall be no chief justice, or he refuses or neglects to act, the board of trustees shall appoint one of their number to draw the funds as above provided, and also to fill any vacancy in the board. The dean of said college shall be ex officio of the faculty of the university, and entitled to attend meetings of the board of regents at all times when he shall have business of the college to lay before them, and to be heard on all questions affecting the college. The trustees may acquire, by gift or otherwise, such real estate and other property as may be necessary for the use of said college.

Business of the college.

SEC. 3. Section five of said act is amended to read as follows:

Section 5. The business of the college shall be to afford facilities for the acquisition of legal learning in all branches of the law, and to this end it shall establish a curriculum of studies, and shall matriculate students who may reside at the university of the state as well as students residing in other parts of the state; provided, there shall always be in said college a course of lectures upon the duties of municipal officers in the city and county of San Francisco; and provided further, that there shall always be in said college a course of lectures upon legal ethics and morality in business. All instruction in said college shall be free.

Appropriation.

SEC. 4. Section eight of said act is amended to read as follows:

Section 8. The sum of seven per cent per annum upon one hundred thousand ($100,000) dollars is to be appropriated by the state to said college, and paid in two semi-annual payments according to the terms of the original foundation.

SEC. 5. This act shall take effect immediately.

VENTURA COUNTY.

References to special and local acts.—Act creating county of Ventura, 1871-2, 484; 1873-4, 365.

Defining legal distances, 1873-4, 21.

To protect agriculture, 1873-4, 50.

To reincorporate town of San Buenaventura, 1873-4, 54.

In third senatorial district, 1873-4, 366.

Fixing salaries of certain officers, 1873-4, 618.

To enforce payment of delinquent taxes, 1873-4, 723.

For transfer of certain papers from Santa Barbara county, 1875-6, 170.

To reincorporate town of San Buenaventura and change name of Canada street to Ventura avenue, 1875-6, 534,

Concerning terms of county court, 1875-6, 572.

Providing for construction of Casitas pass road, 1877-8, 19.

Extending time for publishing delinquent tax list, 1877-8, 64.

Fixing bonds of county officers, 1877-8, 334.

Authorizing trustees of San Buenaventura school district to issue bonds, 1877-8, 286.

Amending act reincorporating town of San Buenaventura, 1877-8, 537.

VETERANS' HOME ASSOCIATION.

See also AGED PERSONS.

An Act to appropriate money for the support of aged persons in indigent circumstances residing in the home of the Veterans' Home Association.

[Approved March 7, 1883; 1883, 55.]

Per capita appropriation.

SECTION 1. There is hereby appropriated, out of any money in the state treasury not otherwise appropriated, for the support and maintenance of veterans of the late Mexican and civil wars in indigent circumstances residing in the Veterans' Home, under the auspices of the Veterans' Home Association, a corporation duly created and existing under the laws of this state, the sum of one hundred and fifty dollars per annum for each veteran duly admitted to and residing in such home; provided, that in no one year shall a sum exceeding fifteen thousand dollars be paid by virtue of such appropriation.

Semi-annual installments.

SEC. 2. The aid herein granted shall commence the first day of the month after each such veteran shall commence bona fide to reside in and be supported in such home, and shall be paid by the state in semi-annual installments.

SEC. 3. 1. It shall be the duty of such corporation to keep a book in which shall be entered the date of admission, name, age, and place of birth, and military history of each veteran who is or may hereafter be admitted to such institution, and the estate, or income, if any, to which he may be entitled.

2. Said corporation shall also keep a book entitled "monthly accounts." In it shall be entered on the debtor side all moneys received from any and all sources, segregated under their proper heads, and on the credit side all disbursements made, specifying for what purpose made, and the amounts entered in detail so disbursed, segregated under their proper heads, each entry to be made under its proper date.

3. A pay-roll shall be kept of the employees, and the amounts disbursed to each, and at what rate of wages, and for what length and kind of service.

4. A book shall be kept in which shall be entered in detail the amounts and dates of all payments from outside sources, made to each such veteran during his said residence, or to such association for his benefit.

5. A transcript of such books and pay-roll, verified by the oath of the manager of such institution, or person in charge of the same, shall be made and forwarded to the state board of examiners at the time of making demand or presenting claim for state aid, covering the time for which such claim or demand for state aid is made; also a list of all the inmates for whom such claim or demand for such aid is made.

6. Such books and pay-roll shall be open also at all times to the inspection of the state board of examiners, or of any person authorized by it to examine the same, or of any committee of the legislature or clerk thereof duly authorized so to do.

Power of board of examiners.

SEC. 4. The state board of examiners are authorized in behalf of the state, at any time, to inquire, either in person or by authorized agent, into the management of such institution, and upon refusal after due demand to permit such inquiry, such institution shall not thereafter receive any aid under this act. All necessary expenses incurred in making such inquiry shall be audited and allowed by the state board of examiners out of the appropriations of the state for the aid of such institution.

Presentation of claims to board.

SEC. 5. Every claim for aid under this act shall be presented to and audited and allowed by the state board of examiners. Such claim shall contain:

1. The name and location of the institution making the claim;
2. The name of the person or persons having charge or control thereof;
3. The number and class of inmates;
4. The date of admission and age of each;
5. The amount of pension or other income the institution is receiving from each inmate.

Such claim and the statements therein contained shall be verified by the oath of the superintendent or other person having charge of the institution, and the board of examiners may, in their discretion, require the production of the books of such institution in support of such claim.

SEC. 6. If such claim be audited and allowed in whole or in part by said board, it shall be the duty of the controller to draw his warrant for the amount thereof in favor of the president and treasurer of said association; and it shall be the duty of the state treasurer to pay the same on due presentation.

Full amount of support.

SEC. 7. No person for whose specific support there is paid said institution the sum of twelve dollars and fifty cents or more per month shall be entitled to any aid under this act. But if such sum be less than twelve dollars and fifty

cents per month, aid shall be granted for such sum only as is necessary to make the full amount of support, including the state aid, twelve dollars and fifty cents per month.

Claims presented semi-annually.

SEC. 8. Such claims or demands for state aid shall be presented to and acted on by said board, and paid by said treasurer semi-annually, commencing from the first day of the month after said home shall be open to and shall receive its inmates. The first of said claims to be so presented at the expiration of six months from said last-mentioned time, and each subsequent claim at regular intervals of six months thereafter.

Money, how expended.

SEC. 9. No money appropriated by the state under this act shall be expended either in improvements or in the erection of new buildings for such institution.

Limitations.

SEC. 10. No person shall be entitled to receive any aid under this act unless he has been admitted to and is kept in said home by reason of military or naval services; nor unless he has been continuously a resident of this state for three years next prior to his admission to said home; nor unless he would be entitled to receive such aid by virtue of the laws and constitution of this state. Before allowing a claim in behalf of any inmate of said home, the board of examiners shall require proof of such facts.

See also an act authorizing associated veterans of Mexican war to exchange lands: Stats. 1871-2, 363.

An act amending the same: Stats. 1881. 66.

VITICULTURE.

See AGRICULTURE; FORESTRY; FRUIT-TREES AND VINES.

See also Stat. 1885, sec. 2979, Pol. Code.

An Act for the promotion of the viticultural industries of the state.

[Approved April 15, 1880; 1880, 52 (Ban. ed. 224).]

Board of viticultural commissioners, how constituted.

SECTION 1. There shall be appointed by the governor a board of state viticultural commissioners, to consist of nine members, two to be appointed from the state at large, and one to be appointed from each of the seven viticultural districts, which shall be constituted as follows:

1. The Sonoma district, which shall include the counties of Sonoma, Marin, Lake, Mendocino, Humboldt, Del Norte, Trinity, and Siskiyou.

2. The Napa district, which shall include the counties of Napa, Solano, and Contra Costa.

3. The San Francisco district, which shall include the city and county of San Francisco, and the counties of San Mateo, Alameda, Santa Clara, Santa Cruz, San Benito, and Monterey.

4. The Los Angeles district, which shall include the counties of Los Angeles, Ventura, Santa Barbara, San Luis Obispo, San Bernardino, and San Diego.

5. The Sacramento district, which shall include the counties of Sacramento, Yolo, Sutter, Colusa, Butte, Tehama, and Shasta.

6. The San Joaquin district, which shall include the counties of San Joaquin, Stanislaus, Merced, Fresno, Tulare, and Kern.

7. The El Dorado district, which shall include the counties of El Dorado,

Amador, Calaveras, Tuolumne, Mariposa, Placer, Nevada, Yuba, Sierra, Plumas, Lassen, Modoc, Alpine, Mono, and Inyo.

Residence—Terms.

SEC. 2. The commissioners, excepting the two appointed from the state at large, shall be residents of the districts from which they are appointed, and shall be specially qualified by practical experience and study in connection with the industries dependent upon the culture of the grape-vine in this state. They shall each hold office for the term of four years, excepting that of the nine first appointed, four, to be determined by lot, shall retire at the end of four years, when their successors shall be appointed by the governor.

Officers.

SEC. 3. The board shall elect from among their own number a president, a vice-president, and a treasurer, and they shall appoint a secretary, who shall not be one of their number, and whose salary shall not exceed one hundred dollars per month. And the board shall determine and fix the amount of bonds that shall be given by the treasurer and secretary for the faithful performance of their duties.

Duties.

SEC. 4. It shall be the duty of the board to meet semi-annually to consult and to adopt such measures as may best promote the progress of the viticultural industries of the state. It shall be their duty to select and appoint competent and qualified persons to deliver at least one lecture each year in each of the viticultural districts named in section one of this act, for the purpose of illustrating practical viticultural topics, and imparting instruction in methods of culture, pruning, fertilizing, fermenting, distilling, and rectifying, treating diseases of the vine, raisin-drying, etc., for the better instruction of the people interested therein, as the requirements of each district may show to be necessary and important, and to disseminate all such useful knowledge relating to viticulture, by printed documents or correspondence, as may be within their power to do. The board shall devote especial attention to the study of the phylloxera and other diseases of the vine, and shall make such recommendations in their semi-annual reports as they may deem best for the protection of vineyards.

Compensation.

SEC. 5. The commissioners constituting the board shall serve without compensation, and shall be allowed only their actual transportation expenses to and from their places of residence when attending the semi-annual meetings of the board.

Location of office.

SEC. 6. The office of the board shall be in the city of San Francisco, and shall be kept open to the public, subject to the rules of the board, every day, excepting legal holidays, and shall be in charge of the secretary during the absence of the board.

Duties of secretary.

SEC. 7. It shall be the duty of the secretary to attend all regular meetings of the board, and to preserve records of proceedings and correspondence; to collect books, pamphlets, periodicals, and other documents containing valuable information relating to viticulture, and to preserve the same; to collect statistics and other information, showing the actual condition and progress of viti-

culture in this state and elsewhere; to collect information concerning lands suitable for viticulture, and to impart to the public, upon proper demands being made, information concerning the localities of such lands, prices, cost of cultivation, and means of transportation; provided, that he shall receive no fees for such services; to correspond with agricultural and viticultural societies, colleges, and schools of agriculture, and other persons and bodies, political or private, and to disseminate information, printed or otherwise, as he may be directed by the board of commissioners; and to prepare, as required by the board, semi-annual reports for publication.

Duty of board of regents of University of California.

SEC. 8. And for the further promotion of viticultural interests, it shall be the duty of the board of regents of the University of California to provide for special instruction to be given by the agricultural department of the university in the arts and sciences pertaining to viticulture, the theory and practice of fermentation, distillation, and rectification, and the management of cellars, to be illustrated by practical experiments with appropriate apparatus; also, to direct the professor of agriculture, or his assistant, to make personal examinations and reports upon the different sections of the state adapted to viticulture; to examine and report upon the woods of the state procurable for cooperage, and the best methods of treating the same; and to make analysis of soils, wines, brandies, and grapes, at the proper request of citizens of the state; also, to prepare a comprehensive analysis of the various wines and spirits produced from grapes, showing their alcoholic strength and other properties, and especially any deleterious adulterations that may be discovered. The regents shall also cause to be prepared, printed, and distributed to the public quarterly reports of the professor in charge of this work, relating to experiments undertaken, scientific discoveries, the progress and treatment of the phylloxera and other diseases of the vine, and such other useful information as may be given for the better instruction of viticulturists.

Donations.

SEC. 9. The board of regents of the university shall be authorized to receive and accept donations of lands suitable for experimental vineyards and stations, and shall submit in their next annual report an economical plan for conducting such vineyards, and for the propagation and distribution of specimens of all known and valuable varieties of grape-vines.

Appropriation.

SEC. 10. There is hereby appropriated, for the purposes mentioned in this act, the sum of seven thousand dollars, to be apportioned as follows: For the necessary and contingent expenses of the board of state viticultural commissioners, four thousand dollars, and for the University of California, three thousand dollars; and the state controller shall draw his warrants upon the state treasurer in favor of the treasurers of the said board of state viticultural commissioners, and of the University of California, for the amounts of four thousand and three thousand dollars respectively, as hereby appropriated, upon proper demand being made for the same; provided, that the said board of state viticultural commissioners shall, in the month of December, submit to the governor annual statements, duly verified by the oaths of the president and treasurer, and attested by the secretary of said board, showing in detail the manner in which moneys received from the state have been expended, and also

the amount remaining unexpended, together with an estimate of expenses for the ensuing year, beginning on the first day of July next thereafter.

SEC. 11. This act shall take effect and be in force from and after its passage.

An act for the better protection of fruit-trees and vines, approved April 9, 1880; 1880, 36 (Ban. ed. 187). This act is given in full, *ante:* See "Fruit-trees and Vines."

An Act to define and enlarge the duties and powers of the board of state viticultural commissioners, and to authorize the appointment of certain officers, and to protect the interests of horticulture and viticulture.

[Approved March 4, 1881; 1881, 51.]

Duties of commissioners.

SECTION 1. The board of state viticultural commissioners, in addition to the duties and powers provided for by the act entitled "An act for the promotion of viticultural industries of the state," approved April fifteenth, eighteen hundred and eighty, shall, in respect to diseases of grape-vines and vine pests, constitute a board of health. It shall, in addition to laboratory work, cause practical experiments to be made to determine or demonstrate the utility of known and new remedies against such diseases and pests.

Election of viticultural health-officer.

SEC. 2. The board shall elect of their own number, or appoint from without their own number, a competent person to serve as chief executive viticultural officer, who shall perform also the duties of viticultural health-officer under direction of said board, and subject to removal from such office at any time by the board.

Duties of.

SEC. 3. The viticultural health-officer shall have power, subject to the approval of the board, to prevent the spread of vine diseases and vine pests, by declaring and enforcing rules and regulations in the nature of quarantine, to govern the manner of, restrain, or prohibit the importation into the state, and the distribution and disposal within the state, of all vines, vine-cuttings, débris of vineyards, empty fruit-boxes, or other material on or by which the contagion of vine diseases and germs of vine pests may be introduced into the state, or transported from place to place within the state; to declare and enforce regulations approved by the board for the disinfection of vines, vine-cuttings, vineyard débris, empty fruit-boxes, and other suspected material dangerous to vineyards, while in transit, or about to be distributed, or transported into or within the state; to classify the vineyards and viticultural regions of the state, according to the degree of health or vine disease prevailing therein, and to change the same as circumstances may require to be done, subjecting each class to such varying rules and regulations, respecting the introduction or transportation of vines, vine-cuttings, and other material liable to spread contagion of disease among vines, as may, in the opinion of the board, become necessary and expedient for the preservation of vineyards. Such rules and regulations shall be circulated in printed form by the board among the vine-growers and fruit-dealers of the state, shall be published at least thirty days in two daily newspapers of general circulation in the state, not of the same city or county, and shall be posted in a conspicuous place at the county seat of each county affected by their provisions.

May appoint local inspectors; duties of.

SEC. 4. The viticultural health-officer may appoint local resident inspectors in any and all of the viticultural regions of the state, whose duties shall be to

report to him concerning the health of grape-vines, the progress of vine diseases and pests, and all violations of the rules and regulations of the board; to certify to the proper disinfection of vines, vine-cuttings, empty fruit-boxes, and other transportable articles required by the board to be disinfected before transportation, or while in transit, or after delivery at any point of destination, the methods of disinfection to be determined and approved by the health-officer and the board; to seize upon and destroy all vines, vine-cuttings, débris of vineyards, empty fruit-boxes, and other material liable to spread contagion, which may be found in transit, or delivered after transportation, not certified to as required by the board; provided, that the same may be exempt from such destruction if the cost of disinfection by such inspector shall be provided for by the owner or agent in charge thereof, as may be prescribed for such cases of negligence, carelessness, or violation of quarantine rules, and to keep a record of all proceedings as such inspectors; provided, that there shall be no compensation for such services of inspection, excepting a fee not to exceed one dollar for each certificate of disinfection, in case of compliance with quarantine regulations, and not to exceed five dollars for each certificate of disinfection after seizure for non-compliance; provided, however, such inspection may be employed at the option of the owners of property requiring disinfection to disinfect the same. All vines or other articles absolutely prohibited of importation or transportation may be promptly destroyed by any inspector discovering the same transported or in transit, in violation of regulations, and the cost of such seizure, together with a fee of ten dollars, shall be paid to such inspector out of any fine that may be collected from the party or parties guilty of such violation. Willful violation of the quarantine regulations of the board shall be considered a misdemeanor, and punishable by a fine of not less than twenty-five nor more than one hundred dollars. Whenever required, for the convenience of vine or fruit growers, or fruit-dealers, a resident inspector shall be appointed, upon petition of any three neighboring vine or fruit growers, or dealers in grapes, to reside in their vicinity, if not already provided for; and there shall be not less than two inspectors appointed for each county which is subjected to such quarantine regulations, and they shall each be subject to removal at the will of the viticultural health-officer, if incompetent, or they fail to perform their duties, or are unreasonably distasteful to vine-growers and grape-dealers.

Duty of chief executive officer.

SEC. 5. It shall be also the duty of the chief executive viticultural officer to personally visit, examine, and report upon the several viticultural regions of the state; to prepare documents for publication, as required by the board, relating to any and all branches of viticultural industry, including treatises for the instruction of the public; to supervise the preparation of reports for publication, and especially report upon the practicability and means of eradicating diseases from vineyards, and to superintend experiments with known and new remedies.

Printing.

SEC. 6. All printing heretofore ordered by the board shall be paid for out of the appropriations heretofore made for its use. All printing required hereafter shall be done by the state printer.

Salary.

SEC. 7. The salary of the chief executive viticultural officer shall be fixed by the board, not to exceed one hundred and fifty dollars per month, for services while engaged as such officer, and his actual traveling expenses shall be allowed, not to exceed five hundred dollars per annum.

Appointment of horticultural officer.

SEC. 8. The board of state viticultural commissioners shall also appoint an officer, who shall be especially qualified by practical experience in horticulture for the duties of his office, to perform similar duties respecting the protection of fruit and fruit-trees as are provided for in this act in reference to grape-vines, with like powers; and the salary and traveling expenses of such officer shall be fixed by the said board at the same amounts provided for in the case of the chief executive viticultural officer; and the said board shall have power to establish such quarantine rules and regulations as are required for the protection of fruit and fruit-trees from the spread of insect pests.

Appropriation.

SEC. 9 There is hereby appropriated for the uses of the board of state viticultural commissioners, as set forth in this act, and in the act providing for its organization, out of any moneys in the state treasury not otherwise appropriated, the sum of ten thousand dollars for the year commencing July first, eighteen hundred and eighty-one; and ten thousand dollars for the year commencing July first, eighteen hundred and eighty-two; and the state controller will draw his warrants upon the state treasurer in favor of the treasurer of the said board for the said sums, or any part thereof, when they become available, upon proper demand being made for the same by said board; provided, that no claim shall be paid out of said appropriation until the same shall have been presented to and approved by the state board of examiners.

SEC. 10. This act shall take effect and be in force from and after its passage.

The concurrent resolution of 1883, requesting our congressional delegation to urge the passage of laws for the promotion and protection of the viticulturial industries of this and of other states, will be found in Stats. 1883, 398.

An Act to enlarge the duties of the board of state viticultural commissioners.

[Approved February 26, 1885; 1885, 9.]

SECTION 1. The board of state viticultural commissioners shall, in addition to its duties already prescribed by law, adopt such measures as may be within its power, and in accordance with its best judgment, to advance the skill and increase the technical knowledge of citizens of this state who are engaged in viticulture and viniculture, by providing practical instruction to those requiring the same; also, to assist producers in finding profitable markets for their products, by extending commercial and popular knowledge of the same throughout the United States and foreign countries, by means of public addresses, circulars, printed documents, and personal efforts of duly authorized representatives and lecturers of the said board; and also to promote the general welfare of the people, by distributing and disseminating information and scientific instruction concerning the rational uses and the dangers of abuses of fermented and alcoholic drinks, as well as also the methods of detecting and avoiding adulterations and spurious compounds.

SEC. 2. In addition to the duties now imposed by law upon the chief executive officer of said board, it shall be his duty, on demand of the board of regents of state university, to deliver lectures on practical viticulture and vinification to the students of that institution, provided that such demand does not conflict with other duties required of him by the said commissioners; and also to visit, to the extent of his ability, the vineyards of the state, and to impart to those demanding the same practical information concerning culture, pruning, grafting, and other occupations of vine-growers, including also the methods of preparing, manufacturing, and marketing their products; and also to prepare

statements of the condition, quantity, quality, and variety of successive vintages, which he shall make public in such manner as the board shall direct, for the promotion of commerce, and to enable consumers throughout the United States to acquire such information as may lead to the advantage of producers; and also to prepare for publication a treatise on the rational uses and the dangers of abuses of fermented and alcoholic drinks, for distribution throughout the state, and for such use in the public schools as the state board of education may direct; and he shall also furnish annual statements of merchantable products of viticulture in this state to the department of state at Washington, D. C., with the request that the same be forwarded to the consular offices of the United States throughout the world, to be used for the advancement of commerce; and for these services, in addition to those already required of him, and for all actual and necessary traveling expenses connected therewith, the said board of state viticultural commissioners shall fix, determine, and allow such additional reasonable compensation as the nature and extent of the duties to be performed may require; provided, that in no case shall the said board allow any expenditures or incur any liabilities in excess of the annual appropriation for its support; and provided, that all claims under this and other acts shall be submitted for approval to the state board of examiners.

WATER COMMISSIONERS.

The Political Code, sec. 19, continued in force all acts creating or regulating boards of water commissioners and overseers in the several townships or counties of the state. The following is the law of widest application upon the subject. There are also a few statutes applying to the separate counties, which will be referred to below. For the acts relative to water companies and to canal and ditch companies, see the Civil Code, the statutes following sections 548 and 552.

An Act creating a board of commissioners and the office of overseer in each township of the several counties of this state to regulate watercourses within their respective limits.

[Approved May 15, 1854, 180.]

Board of commissioners

SECTION 1. There shall be in each of the townships of the counties of San Diego, Santa Barbara, San Luis Obispo, Napa, Los Angeles, Solano, Contra Costa, Colusa, Tulare, Tehama, Sonoma, and Santa Cruz, a board of commissioners to regulate watercourses, to consist of three members, and also an overseer, to be elected as hereinafter provided. [*Amendment, approved February* 21, 1861, 31.]

The original section did not contain the names of San Luis Obispo, Tehama, Sonoma, and Santa Cruz counties; but with these exceptions had the same names as the text, and also San Bernardino county.

It was amended previously by the act of February 19, 1857, 31, so as to read like the amendment in the text, with the exception that it did not contain the names of Tehama and Sonoma counties.

Election.

SEC. 2. Upon the petition of a majority of the voters of any township in said counties, the board of supervisors of the respective county shall thereupon order an election, of which ten days' notice shall be given, by at least three notices, posted up at the most public places in such township, to be held at the next general election of township officers of such township, for the election of three commissioners and an overseer, whose term of office shall be for one year, and until the election and qualification of their successors; such election shall be conducted by the inspector and judges of election in accordance with the laws regulating elections. The board of supervisors shall canvass the votes

and declare the result. At each succeeding annual election of township officers, three commissioners and an overseer shall be elected by the qualified electors of such township, who shall hold their offices for the term above specified. Vacancies occurring in the office of overseer, by death, resignation, or other casualty, shall be filled by appointment by the commissioners, and the person so appointed shall hold his office until the next annual election of township officers. [*Amendment, approved April* 10, 1862, 235.

Original section.—"SEC. 2. Upon a petition of a majority of the voters of any township in said counties, the county judge shall thereupon order an election, of which ten days' notice shall be given by at least three notices posted up at the most public places in such township, for the election of three commissioners and an overseer, who shall hold their office for one year. The county judge shall, for the purpose of holding said election, appoint one inspector and two judges, whose duty it shall be to see that said elections are conducted in accordance with the laws regulating elections, sum up the votes, and declare the result."

Duties of commissioners.

SEC. 3. The duties of the commissioners shall be to examine and direct such watercourses as they adjudge ought to be appropriated to public use, and apportion the water thereof among the inhabitants of their district, determine the time of using the same, and, upon a petition of a majority of the persons liable to work upon ditches, lay out and construct ditches, as set forth in such petition. [*Amendment, approved April* 10, 1862, 235.

The original section did not contain the words "as they adjudge ought to be apportioned to public use."

Duties of overseer.

SEC. 4. The duties of the overseer shall be to execute the orders of the commissioners, to attend to and see that the water is used as apportioned by said commissioners, to superintend the works ordered by them, to see that the water is kept clear of filth of every description, and the ditches are kept in good repair.

Who liable to work.

SEC. 5. Each able-bodied male inhabitant in every township over the age of sixteen and under fifty shall, when required by the overseer, upon not less than three days' verbal notice, or by notice in writing left at their residence, perform or cause to be performed any number of days' work not exceeding twelve in any one year; provided, that no person shall be compelled to work more than two successive days at any one time, and in no case shall any person or persons be compelled to work or expend money on any ditch or ditches who does not use the water thereof.

Penalty for refusing to work.

SEC. 6. In case any person, after being duly notified as required in the preceding section, shall fail to do or cause to be done the amount of work required, he shall be liable to pay the sum of three dollars per day for every day that he shall fail to work, recoverable at a suit of the overseer, before any competent tribunal, to be by him applied to the construction of ditches within his township.

When watercourse runs through two or more townships.

SEC. 7. In case a watercourse should run through two or more townships, and the commissioners should not be able to agree as to the amount of water to be used by each township, the county judge, upon application of the commissioners, shall determine the difficulty.

Compensation of overseer.

SEC. 8. The commissioners shall allow the overseer reasonable compensation, and for that purpose they are hereby authorized to levy a tax within their

township on persons benefited, in proportion to the amount of water used by each.

When water not subject to this act.

SEC. 9. Where water rises on land owned by any person, it shall not be subject to the provisions of this act, but in all cases after it has passed beyond the limits of said lands it may be used as provided in this act.

Right of way.

SEC. 10. In all cases the commissioners shall have the right of way to cut ditches through their townships.

Penalty for obstructing waters.

SEC. 11. Any person obstructing the waters of any ditch, by dam or otherwise, causing the same to overflow or waste, or who shall throw or cause to be thrown any filth in any such water-ditch, shall be deemed guilty of a misdemeanor, and upon conviction thereof, be fined in any sum not more than ten dollars for the first offense, and twenty for every subsequent offense of the same kind, recoverable at the suit of the overseer before any justice of the peace of the township, to be appropriated as aforesaid.

Damage for breaking of ditch.

SEC. 12. In case any person should be damaged by the breaking of any such ditch, the parties using such ditch shall be liable for all such damages.

Bridges to be kept in repair.

SEC. 13. Bridges shall be constructed and kept in repair over such ditches, by the parties using the water, at such points as the board of commissioners shall direct.

Waters of river, creek, or stream not to be diverted, unless, etc.

SEC. 14. No person or persons shall divert the waters of any river, creek, or stream, from its natural channel, to the detriment of any other person or persons, located below them, on any such stream, unless previous compensation be ascertained and paid therefor, under the provisions of this act, or under the provisions of other laws of this state authorizing the taking of private property for public uses. [*Amendment, approved April* 10, 1862, 235.]

Original section.—"SEC. 14. No person or persons shall divert the waters of any river, creek, or stream from its natural channel to the detriment of any other person or persons located below them on any such stream."

Compensation of owners of land.

SEC. 15. Any person or persons who, under this act, shall conduct water, by ditch or otherwise, across the lands of any person or persons, shall pay to such person or persons owning such lands such compensation as may be agreed upon by the parties owning the lands; and in case the parties cannot agree, each party shall appoint one arbitrator, and in case either party shall neglect or refuse to appoint such arbitrator for the space of three days after written notice has been served on the parties so refusing or neglecting, requiring him to make such appointment, then it shall be lawful, and shall be the duty of the county judge to appoint one arbitrator for the party so refusing, and the two so appointed shall select a third; the arbitrators so chosen may appraise the lands used for ditching purposes, and shall hear and determine all questions of damages arising from the taking and use thereof, and to award the amount of the same to the parties entitled thereto; and for this purpose said arbitrators shall have power to administer oaths. Before proceeding to appraise said lands, said arbitrators shall make and subscribe an oath that they will faithfully and

honestly perform the duties of their appointment. The said arbitrators shall make their report to the county court, and the same shall be affirmed or set aside for cause shown; and if set aside, new arbitrators shall be appointed in the same manner as above, who shall proceed in like manner; and as soon as such award shall be affirmed, it shall have the effect of a judgment, and execution may be issued thereupon by the clerk of the court; provided, that nothing in this act shall be so construed as to apply to the mining interests of this state. [*Amendment, approved April* 28, 1860, 335.]

Original section.—"SEC. 15. Any person or persons who, under this act, shall conduct water, by ditch or otherwise, across the lands of any person or persons, shall pay to such person or persons owning such lands such compensation as can be agreed upon by the parties owning the lands; and in case the parties cannot agree, each party shall appoint one arbitrator, and the two so appointed shall select a third. The arbitrators so chosen shall appraise the lands used for ditching purposes, under oath, and their decision shall be final in the premises; provided, that nothing in this act shall be so construed as to apply to the mining interests of this state."

Ex officio commissioners in cities.

SEC. 16. The mayor and common council in all incorporated cities in the counties mentioned in section first of this act shall ex officio be constituted the board of commissioners on all lands appertaining or belonging to their respective cities, and shall have power to regulate the water privileges therein.

There are in force several acts relating to water commissioners in particular counties, as follows:

San Bernardino county.—An act to create a board of water commissioners in the county of San Bernardino, and define their duties, approved March 6, 1857, 63, amended April 12, 1859, 217, was repealed by an act to create a board of water commissioners in the county of San Bernardino, and to define their duties, approved February 18, 1864; 1863–4, 87; amended February 14, 1866; 1865–6, 93.

An act to protect irrigation and to make water rights responsible for expenses incurred on irrigating ditches in San Bernardino county, approved March 25, 1876; 1875–6, 486.

Merced county.—An act to create a board of water commissioners in the county of Merced, and define their duties, approved April 13, 1860, 182.

Tulare county.—An act to create a board of commissioners in the county of Tulare, to define their powers and duties, and to appropriate money for the purposes thereof, approved March 15, 1864; 1863–4, 167; amended March 20, 1866; 1865–6, 314; and an act to create a board of water commissioners in Tulare county, and to define their powers and duties, approved April 4, 1864; 1863–4, 375; amended March 20, 1866; 1865–6, 313.

Siskiyou county.—An act to create a board of water commissioners in Siskiyou county, and to define their powers and duties, approved March 31, 1866; 1865–6, 609.

Los Angeles city.—An act to create a board of water commissioners in the city of Los Angeles, and to define their powers and duties, approved April 2, 1870; 1869–70, 702.

Los Angeles county.—An act to promote irrigation in the county of Los Angeles, approved March 30, 1874; 1873–4, 312.

Fresno, Tulare, and Kern counties.—An act concerning water-ditches and water privileges for irrigating, mining, and manufacturing purposes in the counties of Fresno, Tulare, and Kern, approved March 29, 1876; 1875–6, 547.

West Side irrigation district in Contra Costa, Alameda, San Joaquin, Stanislaus, Merced, Fresno, and Tulare counties.—An act to create an irrigation district, to be called the West Side irrigation district, approved April 3, 1876; 1875–6, 731; supplemented April 3, 1876; 1875–6, 885.

WHARVES

The Political Code, secs. 2906 et seq., 2520 et seq., and 2567 et seq., seems to have superseded the old legislation on the subject of wharves. See, however, a special act in relation to a portion of Contra Costa county. It is entitled "An act concerning public wharves," approved March 28, 1872; 1871–2, 657. This act authorizes the owners or occupants of lands on the San Joaquin river, between its junction with the Sacramento and the eastern boundary of the county, to erect and maintain free wharves.

WILD ANIMALS.

See GAME.

An act authorizing boards of supervisors to fix bounties for the destruction of, was approved March 15, 1883; 1883, 368; and will be found in full in section 4046, Political Code.

WORLD'S EXHIBITION.

At to provide for a proper representation of the products of California at the next world's exhibition, to be held in New York in 1883; approved March 7, 1881; 1881, 67. The above act appropriated five thousand dollars for the purpose mentioned.

An Act to enable the state of California to make a proper exhibition of her material resources at the world's exposition at New Orleans.

[Approved February 10, 1885; 1885, 2.]

SECTION 1. The sum of ten thousand dollars is hereby appropriated, out of any moneys in the treasury not otherwise appropriated, to pay A. Andrews, the commissioner for the state of California to the world's industrial and cotton centennial exposition at New Orleans, Louisiana, to be expended by him in procuring the productions of this state, both of art and manufactures, and of soil, and of mines, and making a proper exhibition of the same at the said exposition; and the controller is hereby directed to draw his warrant for the said amount, and the treasurer is hereby directed and authorized to pay the same.

SEC. 2. The said commissioner shall make a report to the governor of this state of his proceedings, and of such matters as may be of interest to the people of California, and he shall present to the controller of this state his vouchers, properly authenticated, for all moneys disbursed by him under this act; and he shall return to the state treasurer any balance of this appropriation remaining, after all necessary expenses shall be paid.

SEC. 3. This act shall take effect and be in force from and after its passage.

YOLO COUNTY.

References to special and local acts.—Boundaries, 1850, 61, 156; 1851, 178; 1857, 108; 1865–6, 102; 1871–2, 305, 903.

Seat of justice, 1850, 61, 156; 1851, 178; 1855, 287; 1857, 92; 1860, 209; 1861, 60; 1862, 45.

Fixing compensation of county judge, 1851, 310; 1857, 14.

To fund debt and provide for payment, 1853, 183.

Changing time of holding different courts authorized to be held by county judge, 1855, 103; 1857, 30; 1859, 21; 1861, 268.

To relocate county seat by qualified voters, 1855, 287.

To fund debt accrued from January 1, 1853, to April 1, 1855, and provide for payment, 1855, 289.

To release J. Van Arnam from further liability as surety of A. Chisholm, late treasurer, 1856, 36.

Concerning collection of taxes, 1857, 34.

Changing and fixing county seat, 1857, 92.

Fixing compensation of district attorney, 1857, 256; 1863–4, 10.

Authorizing sale of certain real estate by guardian of infant heirs of William Knight, deceased, 1857, 269.

Concerning official bonds of public administrator and coroner, 1858, 28.

Relative to board of supervisors (fixing compensation), 1858, 34.

Concerning roads and highways, 1858, 227; 1859, 16; 1860, 25.

Granting right to open channel of Cache creek from Clear lake to mouth of cañon in Sacramento valley, 1858, 303.

Authorizing H. H. Hartley to sell certain real estate held by him as trustee (for Augusta H. Dean), 1859, 14.

Concerning office of public administrator, 1859, 96, 234.

For the settlement of the estate of William Knight, deceased, 1859, 207.

Authorizing board of supervisors to take and subscribe fifty thousand dollars to stock of San Francisco and Marysville Railroad Company, etc., 1859, 270.

Providing for purchase or building of turnpike road, 1859, 303.

Legalizing acts of public administrator, 1860, 207.

Providing for location of county seat, 1860, 209.

Locating county seat, 1861, 60.

For relief of J. McCauley, county assessor, 1861, 187.

To submit question of removal of county seat to qualified voters, 1862, 45.

Granting right to construct toll-bridge across Cache creek, at Cacheville, to W. G. Hunt and others, 1862, 427.

Concerning office of county clerk, 1863, 295; 1863–4, 95.

Concerning official publications, 1863, 299.

Concerning office of district assessor, 1863, 306.

Granting right to construct turnpike and maintain ferry across Sacramento river to J. Wadish and others, 1863, 348.

Authorizing board of supervisors to issue certain bonds and provide for payment, etc., 1863, 669.

Providing for division of county into assessment districts and for election of district assessors, and defining their duties, liabilities, and compensation, 1863, 718.

Fixing compensation of board of supervisors, 1863–4, 46.

Concerning official publications, 1865–6, 157.
Supervisors to remove dead bodies, 1865–6, 161.
Boundary line, 1865–6, 162.
To prevent stallions running at large, 1865–6, 327; 1867–8, 70; 1869–70, 68.
Trespass of animals on private property, 1865–6, 440.
To develop agriculture and construct irrigating canal, 1865–6, 451.
Wharf franchise to J. P. Zimmerman, 1865–6, 553.
Franchise to W. D. Fiske and associates for turnpike road from Lake county, 1865–6, 584.
Compensation of supervisors, 1865–6, 590.
Survey of outlet of Feather, Sacramento, and San Joaquin, 1867–8, 91.
Wharf franchise to F. S. Freeman and others, 1867–8, 134.
To aid the California Pacific Railroad Company, 1867–8, 263.
Terms of county and probate court, 1867–8, 266.
Fees and salaries, 1867–8, 448; 1869–70, 148.
To provide for drainage district, 1867–8, 466.
Act in relation to herding sheep, 1869–70, 304.
Terms of district court, 1869–70, 317.
County judge to appoint reporters, 1869–70, 325.
Collection of delinquent taxes legalized, 1869–70, 398.
Bounty tax for destruction of squirrels, 1869–70, 316.
To protect agriculture and prevent trespass of animals, 1869–70, 410.
Supervisors to retain counsel to prosecute and defend land claims, 1869–70, 821.
Supervisors to approve and certify certain claims against swamp-land district No. 18, 1869–70, 863.
Woodland school district to borrow money, 1871–2, 150, 725; 1873–4, 2.
Levy of special taxes for county purposes, 1871–2, 270.
Payment of indebtedness of Yolo school district, 1871–2, 274.
To restrict hunting and shooting of game, 1871–2, 411.
To define boundary line between Yolo and Napa counties, 1871–2, 305, 903.
To prevent hogs and goats running at large in town of Knight's Landing, 1871–2, 438.
Salary of district attorney, 1871–2, 653.
Special tax for Plainfield school district, 1871–2, 699.
Validating contracts for excavating Putah creek canal, 1871–2, 708.
In third congressional district, 1871–2, 714.
To adjust accounts of swamp-land district 18, 1871–2, 757, 797.
To legalize proceedings of supervisors, 1871–2, 776.
To quiet title to certain lands, 1871–2, 803.
In regard to swamp-land district 18, 1871–2, 871.
In regard to herding of sheep; 1871–2, 890.
To protect from overflow of Putah creek, 1871–2, 941; 1873–4, 84.
To prevent hogs and goats running at large in Davisville, 1873–4, 82.
To establish public road on Colusa county boundary, 1873–4, 213.
Concerning supervisors, 1873–4, 304.
To protect agriculture, 1873–4, 343.
To unite Yolo school district to Putah school district, 1873–4, 350.
In nineteenth senatorial district, 1873–4, 369.
Concerning county officers' fees and salaries, 1873–4, 420; 1875–6, 170, 566.
Concerning roads and highways, 1873–4, 400.
To quiet title to certain lands, 1873–4, 492, 818.
To reincorporate town of Woodland, 1873–4, 557; 1875–6, 818.
To pay outstanding road warrants, 1873–4, 572.
Powers of board of supervisors, 1873–4, 602.
Railroad from Knight's Landing to Marysville, 1873–4, 780.
To pay outstanding warrants against swamp-land district 18, 1873–4, 790.
To credit county with old balance, 1873–4, 802.
Formation of new swamp-land district, 1873–4, 867.
To prevent hogs, goats, and cows running at large in town of Washington, 1875–6, 800.
For relief of William Saunders, 1875–6, 802.
Amending act reincorporating Woodland, 1877–8, 84, 446.
Relating to swamp-land district No. 307, 1877–8, 250.
To prevent trespassing of animals upon private property, 1877–8, 360.
Providing a new great register, 1877–8, 555.
Amending act relating to fees and salaries, 1877–8, 637.
To pay claim of F. E. Baker, 1877–8, 748.
Authorizing levy of tax for county purposes, 1877–8, 843.
To quiet title to certain land (of George Herget), 1877–8, 943.
To create the Sacramento-river drainage district, 1877–8, 987.
For distribution of school moneys, 1877–8, 1003.
For drainage of certain lands, 1877–8, 1037.

YOSEMITE VALLEY.

The management of the Yosemite valley is provided for in the Political Code, secs. 3584 et seq. But there are several special acts relating to the subject, which it is deemed proper to refer to, as follows:

An act granting the right of way to the Yosemite turnpike road company to construct a toll-road over the Yosemite grant, approved February 17, 1874; 1873–4, 106; supplemented March 25, 1874; 1873–4, 607; amended March 15, 1876; 1875–6, 303.

An act to provide for the payment of attorney's fees (in suits concerning possession and control of Yosemite valley), approved March 23, 1873–4; 1873–4, 521.

An act to indemnify *bona fide* settlers on the Yosemite grant, approved March 23, 1874; 1873–4, 523.

The salary of guardian of the valley and incidental expenses of commissioners were provided for by the appropriation acts of April 1, 1872; 1871–2, 743; and March 30, 1874; 1873–4, 898.

YUBA COUNTY.

References to special and local acts.—Boundaries, 1850, 62; 1851, 176; 1860, 115; 1861, 167; 1865–6, 228.

Seat of justice, 1850, 62; 1851, 176.

Creating Sierra county, 1852, 230.

To appoint commissioners to determine amount of indebtedness of Yuba county justly chargeable to Nevada county, etc., 1852, 242.

To fund the debt and provide for payment, 1852, 244; 1854, 43; 1857, 109, 363; 1858, 230; 1859, 98; 1862, 60.

Separating office of county recorder from office of county clerk, 1853, 82.

Providing that court of sessions shall be empowered to levy and cause to be collected special tax for erecting public buildings, etc., 1854, 79; 1855, 188.

Allowing court of sessions to levy special tax for support of indigent sick, 1854, 185.

Separating office of collector of taxes from office of sheriff, 1855, 164, 284; 1857, 8.

Authorizing guardian of Minna C. Buchanan to sell and dispose of real estate, etc., 1856, 43; 1858, 17; 1862, 142.

Providing for support of indigent sick, 1856, 69; 1860, 24.

Concerning records, 1856, 139.

Fixing compensation of county judge, 1857, 256.

Fixing commencement of terms of office, 1857, 281.

Regulating fees in office, 1857, 281; 1858, 263, 311; 1860, 235; 1861, 64; 1862, 481.

Authorizing board of supervisors to take and subscribe two hundred thousand dollars to stock of railroad to connect Marysville with Sacramento river, etc., 1857, 296; 1862, 61.

Changing and fixing time of holding court of sessions and county court, 1858, 60; 1859, 97.

Authorizing Mary Latimer to sell or convey real estate, 1858, 93.

Granting right to construct and maintain bridge across Feather river to S. J. Clark, jun., 1858, 336; 1860, 107.

Providing for settling boundary line between Yuba and Butte counties, 1859, 225.

Authorizing San Francisco and Marysville Railroad Company to construct and maintain railroad bridge across Feather river, etc., 1859, 255.

Relating to care and treatment of indigent sick, 1859, 262.

Authorizing board of supervisors to levy special tax for county purposes, 1859, 329.

Defining locality of Strawberry Valley village, 1860, 115.

Regulating cars and maintenance of indigent sick, 1860, 191.

Providing for funding indebtedness incurred on account of county hospital, etc., 1861, 12.

Changing boundary line between Yuba and Butte counties at Woodville House, 1861, 167.

Authorizing board of supervisors to construct bridge across Yuba river, 1861, 209.

Authorizing county judges other than county judge of Yuba county to hold terms of county court, court of sessions, and probate court in Yuba county, 1861, 272.

Authorizing executor of George W. Birdsall, deceased, to sell real estate, 1861, 371.

Granting to J. R. Vineyard and assigns right to construct and maintain toll-bridge across Yuba river near Park's bar, 1862, 149; 1863, 744.

Authorizing sale of real estate belonging to estate of Henry P. Haun, deceased, 1862, 295.

Organizing fire department of town of Timbuctoo, 1862, 466.

Authorizing board of supervisors to issue bonds to California Central Railroad Company to amount of one hundred thousand dollars, 1862, 530.

Granting right of way to construct toll-bridge across Bear river at McCourtney's crossing, 1862, 560.

Authorizing S. Spencer and others to construct toll-bridge across Yuba river, at Sand Flat, 1863, 183.

Provinding for better collection of delinquent taxes, 1863, 571.

Providing for time of holding county court and probate court, 1863–4, 41.

To reduce penalty of official bond of sheriff, 1863–4, 93.

Granting to J. L. Hall and associates right to lay down and maintain gas-pipes in town of Brown's Valley, 1863–4, 224.

To enforce collection of road taxes, 1863–4, 496.

Authorizing Yuba Railroad Company to change its northern terminus, 1863–4, 509.

To donate to Yuba Railroad Company, 1865–6, 75, 373.

Terms of district court, 1865–6, 79; 1867–8, 96.

Term of office of district attorney, 1865–6, 148; 1869–70, 581.

Official publications in, 1865–6, 157.

Boundary line, 1865–6, 228.

Marysville and Beckworth pass turnpike, 1865–6, 228.

Hogs, penalty of constable, 1865–6, 323.

To prevent stallions running at large, 1865–6, 327; 1867–8, 70; 1869–70, 68.

Publication of summons and executions, 1865–6, 615.

Assessing and collecting revenue, 1865–6, 787; 1867–8, 201, 219; 1869–70, 197.

Franchise to W. Smith and others for water-course from Yuba river, 1865–6, 812.

Duties of county recorder, 1865–6, 241, 823; 1869–70, 505.

Liquidation and payment of indebtedness, 1867–8, 50, 240.

Terms of district court, 1867–8, 95.

To construct bridge across Yuba river, 1867–8, 122.

For payment of state's portion of auditors' salary, 1867–8, 370.

Public and private roads, 1867–8, 158.

Assessors of districts, salaries of, 1867–8, 219.

Fees and salaries, 1869–70, 148.

Treasurer, salary and fees, 1867–8, 201.

To levy and collect tolls on Marysville and Brown's Valley turnpike, 1869–70, 103.

Indigent sick, 1869–70, 107.

Separate office of recorder from county clerk, 1869–70, 377.

Term of office of district attorney, 1869–70, 581.

To confer additional powers on supervisors, 1869–70, 782.

Time for levy of road tax, 1869–70, 231.

Concerning roads and highways, 1871–2, 72.

Authorizing William S. Findley to remove certain bodies, 1871–2, 553.

Salary of district attorney, 1871–2, 653.

Construction of bridge across Yuba river, 1871-2, 654.
Bonds for improving wagon-roads and bridges, 1871-2, 662.
Defining lawful and partition fences, 1871-2, 700.
In third congressional district, 1871-2, 714.
Authorizing John Ram or S. C. Long to remove certain human remains, 1871-2, 765.
As to herding of sheep, 1871-2, 890.
Repealing special road law, 1873-4, 11.
Fixing salaries and compensation of certain officers, 1873-4, 109.
To protect lands from overflow, 1873-4, 223.
For incorporation of town of Wheatland, 1873-4, 351; 1875-6, 19.
In twenty-fifth senatorial district, 1873-4, 369.
To pay outstanding road warrants, 1873-4, 572.
For railroad from Marysville to Knight's Landing, 1873-4, 780.
To protect agriculture and prevent trespassing of animals in Marysville and Long Bar townships, 1875-6, 211.
Relating to fees and salaries of certain officers, 1875-6, 522.
Relating to road overseers and road poll-taxes, 1877-8, 157.
To provide for transcribing certain records, 1877-8, 212.
Amending Wheatland incorporation act, 1877-8, 441.
Organizing a levee district (Bear river district No. 1), 1877-8, 732.
Concerning fees of justices of the peace, 1877-8, 738.
To incorporate town of Yuba city, 1877-8, 783.
Amending act for protection of lands from overflow, 1877-8, 789.
City of Marysville.—Incorporating city of Marysville, 1851, 330, 338; 1852, 247; 1853, 141; 1854, 34, 54, 230; 1855, 33.
Concerning fire companies, 1853, 60; 1856, 65; 1857, 53.
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